SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 457

C. J. ADAMS, ALIAS CHARLIE ADAMS, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[fol. 1]

IN DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA

Style of Cause

UNITED STATES OF AMERICA, Plaintiff,

VERSUS

WALTER TOWNS, CARRIE LEE TOWNS and C. J. ADAMS alias CHARLIE ADAMS, Defendants.

Criminal No. 11470

Indictment for Violation of Sec. 311 of Title 50 of the United States Code. Aiding and abetting failure to register with Local Board and Conspiracy

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[fol. 2] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

May Term, 1945

No. 11470

INDICTMENT—Filed June 27, 1945

Vio: Section 311, Title 50, USCA

Count One

The Grand Jurors of the United States, duly selected, empaneled and sworn, in and for the Southern District of Alabama, upon their oaths, do find, present and charge:

1. That heretofore and on, to wit, the 10th day of June, 1944, one Samuel B. Towns, alias Sammy B. Towns, alias Samuel Towns, alias Sammy Towns, alias Isaac Town, alias Isham Town, alias Bit Towns, alias Buddy Towns, who is hereinafter called Samuel B. Towns, was a person charged, as provided in the Selective Training and Service Act of 1940, as amended, with the duty of carrying out a provision of said Act and the rules and regulations made and directions given thereunder, that is to say, to wit: The said Samuel B. Towns was then and there a male citizen of the United States between the

ages of 18 and 65 years, who had not been registered under the Selective Training and Service Act of 1940, as amended, prior to the said 10th day of June, 1944, and was on said 10th day of June, 1944, at Selma, in Dallas County, Alabama, within the area over which Selective Service Local Board No. 1, Dallas County, Alabama, had jurisdiction, and was charged with the [fol. 3] duty of presenting himself for and submitting to registration at said Local Board No. 1, Dallas County, Alabama, on said 10th day of June, 1944;

2. That heretofore and on, to wit, the 10th day of June, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this court, Walter Towns, Carrie Lee Towns, and C. J. Adams, alias Charlie Adams, whose respective names are to the Grand Jurors otherwise unknown, and who are the defendants herein, did unlawfully and knowingly aid, counsel and abet the said Samuel B. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 1, Dallas County, Alabama; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Count Two

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further find, present and charge:

1. That heretofore and on, to wit, the 19th day of September, 1944, one Samuel B. Towns, Alias Sammy B. Towns, alias Samuel Towns, alias Sammy Towns, alias Isaac Town, alias Isham Town, alias Bit Towns, alias Buddy Towns, who is hereinafter called Samuel B. Towns, was a person charged, as provided in the Selective Training and Service Act of 1940, as amended, with the duty of carrying out a provision of said Act and the rules and regulations made and directions given thereunder, that is to say, to wit: The said Samuel B. Towns was then and there a male citizen of the United States between the ages of [fol. 4] 18 and 65 years, who had not been registered under the Selective Training and Service Act of 1940, as amended, prior to the said 19th day of September, 1944,

and was on said 19th day of September, 1944, at or near Pleasant Hill, in Dallas County, Alabama, within the area over which Selective Service Local Board No. 2, Dallas County, Alabama, had jurisdiction, and was charged with the duty of presenting himself for and submitting to registration at said Local Board No. 2, Dallas County, Alabama, on said 19th day of September, 1944;

2. That heretofore and on, to wit, the 19th day of September, 1944, at or near Pleasant Hill, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Walter Towns, Carrie Lee Towns, and C. J. Adams, alias Charlie Adams, whose respective names are to the Grand Jurors otherwise unknown, and who are the defendants herein, did unlawfully and knowingly aid, counsel and abet the said Samuel B. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2, Dallas County, Alabama; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Count Three

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further find, present and charge:

1. That heretofore and on, to wit, the 10th day of June, 1944, one Samuel C. Towns, alias Sammy C. Towns, alias Samuel Towns, alias Sammy Towns, alias [fol. 5] Isaac Town, alias Isham Town, alias Bit Towns, alias Buddy Towns, who is hereinafter called Samuel C. Towns, was a person charged, as provided in the Selective Training and Service Act of 1940, as amended, with the duty of carrying out a provision of said Act and the rules and regulations made and directions given thereunder, that is to say, to wit: The said Samuel C. Towns was then and there a male citizen of the United States between the ages of 18 and 65 years, who had not been registered under the Selective Training and Service Act of 1940, as amended, prior to the said 10th day of June, 1944, and was on said 10th day of June, 1944, at Selma, in Dallas County, Alabama, within the area over which Selective Service Local Board No. 1, Dallas County, Alabama, had

jurisdiction, and was charged with the duty of presenting himself for and submitting to registration at said Local Board No. 1, Dallas County, Alabama, on said 10th day of June, 1944;

2. That heretofore and on, to wit, the 10th day of June, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this court, Walter Towns, Carrie Lee Towns and C. J. Adams, alias Charlie Adams, whose respective names are to the Grand Jurors otherwise unknown, and who are the defendants herein, did unlawfully and knowingly aid, counsel and abet the said Samuel C. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 1, Dallas County, Alabama; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

[fol. 6] Count Four

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further find, present and charge:

1. That heretofore and on, to wit, the 19th day of September, 1944, one Samuel C. Towns, alias Sammy C. Towns, alias Samuel Towns, alias Sammy Towns, alias Isaac Town, alias Isham Town, alias Bit Towns, alias Buddy Towns, who is hereinafter called Samuel C. Towns, was a person charged, as provided in the Selective Training and Service Act of 1940, as amended, with the duty of carrying out a provision of said Act and the rules and regulations made and directions given thereunder, that is to say, to wit: The said Samuel C. Towns was then and there a male citizen of the United States between the ages of 18 and 65 years, who had not been registered under the Selective Training and Service Act of 1940, as amended, prior to the said 19th day of September, 1944, and was on said 19th day of September, 1944, at or near Pleasant Hill, in Dallas County, Alabama, within the area over which Selective Service Local Board No. 2, Dallas County, Alabama, had jurisdiction, and was charged with the duty of presenting himself for and submitting to registration at said Local Board No. 2, Dallas County, Alabama, on said 19th day of September, 1944;

2. That heretofore and on, to wit, the 19th day of September, 1944, at or near Pleasant Hill, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Walter Towns, Carrie Lee Towns, and C. J. Adams, alias Charlie Adams, whose respective names are [fol. 7] to the Grand Jurors otherwise unknown, and who are the defendants herein, did unlawfully and knowingly aid, counsel and abet the said Samuel C. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2, Dallas County, Alabama; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Count Five

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further find, present and charge:

1. That heretofore and on, to wit, the 10th day of June, 1944, one John Derry Towns, alias John Towns, alias J. D. Towns, who is hereinafter called John Towns, was a person charged, as provided in the Selective Training and Service Act of 1940, as amended, with the duty of carrying out a provision of said Act and the rules and regulations made and directions given thereunder, that is to say, to wit: The said John Towns was then and there a male citizen of the United States between the ages of 18 and 65 years, who had not been registered under the Selective Training and Service Act of 1940, as amended, prior to the said 10th day of June, 1944, and was on said 10th day of June, 1944, at Selma, in Dallas County, Alabama, within the area over which Selective Service Local Board No. 1, Dallas County, Alabama, had jurisdiction, and was charged with the duty of presenting himself for and submitting to registration at said Local Board No. 1, Dallas County, Alabama, on said 10th day of June, 1944;

2. That heretofore and on, to wit, the 10th day of June, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, [fol. 8] and within the jurisdiction of this Court, Walter Towns, Carrie Lee Towns, and C. J. Adams, alias Charlie

Adams, whose respective names are to the Grand Jurors otherwise unknown, and who are the defendants herein, did unlawfully and knowingly aid, counsel and abet the said John Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 1, Dallas County, Alabama; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Count Six

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further find, present and charge:

1. That heretofore and on, to wit, the 19th day of September, 1944, one John Derry Towns, alias John Towns, alias J. D. Towns, who is hereinafter called John Towns, was a person charged, as provided in the Selective Training and Service Act of 1940, as amended, with the duty of carrying out a provision of said Act and the rules and regulations made and directions given thereunder, that is to say, to wit: The said John Towns was then and there a male citizen of the United States between the ages of 18 and 65 years, who had not been registered under the Selective Training and Service Act of 1940, as amended, prior to the 19th day of September, 1944, and was on the said 19th day of September, 1944, at or near Pleasant Hill, in Dallas County, Alabama, within the area over which Selective Service Local Board No. 2, Dallas County, Alabama, had jurisdiction, and was charged with the duty of presenting himself for and submitting to registration at said Local Board No. 2, Dallas County, Alabama, on said 19th day of September, 1944;

[fol. 9] 2. That heretofore and on, to wit, the 19th day of September, 1944, at or near Pleasant Hill, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Walter Towns, Carrie Lee Towns, and C. J. Adams, alias Charlie Adams, whose respective names are to the Grand Jurors otherwise unknown, and who are the defendants herein, did unlawfully and knowingly aid, counsel and abet the said John Towns to unlawfully and knowingly fail and neglect to present himself for and

submit to registration at said Local Board No. 2, Dallas County, Alabama; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Count Seven

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further find, present and charge:

1. That on the date hereinafter mentioned as the date of the beginning of the conspiracy hereinafter described Samuel B. Towns, alias Sammy B. Towns, alias Samuel Towns, alias Sammy Towns, alias Isaac Town, alias Isham Town, alias Bit Towns, alias Buddy Towns, hereinafter referred to as Samuel B. Towns, and Samuel C. Towns, alias Sammy C. Towns, alias Samuel Towns, alias Sammy Towns, alias Isaac Town, alias Isham Town, alias Bit Towns, alias Buddy Towns, hereinafter referred to as Samuel C. Towns, and John Derry Towns, alias John Towns, alias J. D. Towns, hereinafter referred to as John Towns, were, respectively, male citizens of the United States between the ages of 18 and 45 years, who [fol. 10] had not been theretofore registered under the Selective Training and Service Act of 1940, as amended (hereinafter referred to as the Act), and the rules and regulations made and directions given thereunder; that each of them was, under the provisions of said Act and the rules and regulations made and directions given thereunder, on said date and at all times thereafter mentioned in this indictment, under the continuous duty of immediately presenting himself for and submitting to registration to the Local Board in the area where he happened to be, and that beginning on, to wit, November 13, 1942, and at all times thereafter mentioned in this indictment, each of them was liable for training and service in the land or naval forces of the United States under said Act;

2. That during the period of time between, to wit, the 1st day of January, 1942, and to wit, the 10th day of February, 1945, at or near Pleasant Hill, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Walter Towns, Carrie Lee Towns, and C. J. Adams, alias Charlie Adams, whose respective names are to the Grand

Jurors otherwise unknown, and who are the defendants herein, aware of all of this, did unlawfully, knowingly, willfully and feloniously conspire together and with said Samuel B. Towns, Samuel C. Towns, and John Towns, and others unknown, to commit offenses against the United States by violating Section 11 of said Act, to wit,

(a) to cause the said Samuel B. Towns to unlawfully and knowingly evade registration under said Act by falsely pretending that he, the said Samuel B. Towns, was born on June 9, 1930;

[fol. 11] (b) to cause the said Samuel B. Towns to knowingly and unlawfully evade service in the land or naval forces by falsely pretending that he, the said Samuel B. Towns, was born on June 9, 1930;

(c) to unlawfully and knowingly make a false statement as to the liability or non-liability of Samuel B. Towns for service under said Act, or the rules and regulations or directions made pursuant thereto, to wit, a false statement to Local Board No. 2, Dallas County, Alabama, in substance, that said Samuel B. Towns was born on June 9, 1930;

(d) to cause the said Samuel C. Towns to unlawfully and knowingly evade registration under said Act by falsely pretending that he, the said Samuel C. Towns, was born on June 9, 1930;

(e) to cause the said Samuel C. Towns to knowingly and unlawfully evade service in the land or naval forces by falsely pretending that he, the said Samuel C. Towns, was born on June 9, 1930;

(f) To unlawfully and knowingly make a false statement as to the liability or non-liability of Samuel C. Towns for service under said Act, or the rules and regulations and directions made pursuant thereto, to wit, a false statement to Local Board No. 2, Dallas County, Alabama, in substance, that the said Samuel C. Towns was born on June 9, 1930;

(g) to cause the said John Towns to unlawfully and knowingly evade registration under said Act by falsely pretending that he, the said John Towns, was born on October 9, 1928;

[fol. 12] (h) to cause the said John Towns to knowingly and unlawfully evade service in the land or

naval forces by falsely pretending that he, the said John Towns, was born on October 9, 1928;

(i) to unlawfully and knowingly make a false statement as to the liability or non-liability of John Towns for service under said Act, or the rules and regulations or directions made pursuant thereto, to wit, a false statement to Local Board No. 2, Dallas County, Alabama, in substance, that said John Towns was born on October 9, 1928.

3. That each of the said defendants and the said Samuel B. Towns, Samuel C. Towns and John Towns, and said others unknown, came into the said unlawful conspiracy with the object and purpose of aiding, assisting and participating therein;

4. That the exact date of the beginning of said conspiracy is to the Grand Jurors unknown, but that all of the co-conspirators had entered into said conspiracy before the 28th day of March, 1944, and that each of the conspirators who are hereinafter averred to have committed an overt act entered into said unlawful conspiracy before the date of the overt act hereinafter averred to have been committed by him or her;

5. That the said defendants and the said Samuel B. Towns, Samuel C. Towns and John Towns, at the several times and places hereinafter mentioned in connection with their names, did do certain acts subsequent to the formation of, in pursuance of, during the existence of, in the execution of, and to effect the objects of the said unlawful, knowing and felonious conspiracy heretofore herein described, to wit:

[fol. 13] (1) That on or about the 25th day of March, 1944, at or near Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Samuel B. Towns signed an affidavit that the date of his birth was June 9, 1930, which affidavit was a part of a delayed certificate of birth which was thereafter and on the 28th day of March, 1944, filed with the Bureau of Vital Statistics, Alabama State Department of Health;

(2) That on or about the 25th day of March, 1944, at or near Selma, in Dallas County, Alabama, in the North-

ern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Samuel C. Towns signed an affidavit that the date of his birth was June 9, 1930, which affidavit was a part of a delayed certificate of birth which was thereafter and on the 28th day of March, 1944, filed with the Bureau of Vital Statistics, Alabama State Department of Health;

(3) That on or about the 25th day of March, 1944, at or near Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, John Towns signed an affidavit that the date of his birth was October 9, 1928, which affidavit was a part of a delayed certificate of birth which was thereafter and on the 28th day of March, 1944, filed with the Bureau of Vital Statistics, Alabama State Department of Health;

(4) That on or about the 23rd day of March, 1944, at or near Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Carrie Lee Towns signed an affidavit that the date of the birth of John Towns was October 9, 1928, which affidavit was a part of [fol. 14] a delayed certificate of birth which was thereafter and on the 28th day of March, 1944, filed with the Bureau of Vital Statistics, Alabama State Department of Health;

(5) That on or about the 24th day of March, 1944, at or near Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Carrie Lee Towns signed an affidavit that the date of the birth of Samuel B. Towns was June 9, 1930, and also signed an affidavit that the date of the birth of Samuel C. Towns was June 9, 1930, each of which affidavits was a part of respective delayed certificates of birth, which were thereafter and on the 28th day of March, 1944, filed with the Bureau of Vital Statistics, Alabama State Department of Health;

(6) That on or about the 24th day of March, 1944, at or near Selma, Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, C. J. Adams signed a cer-

tificate as a Notary Public for the State of Alabama, County of Dallas, that he had examined the family Bible in the possession of Carrie Lee Towns, which was published by Collins Clear Type Press and in which the year of publication was not shown, which Bible showed that John Towns had been born at Pleasant Hill, Alabama, on October 9, 1928, and that the name of his father was Walter Towns and the name of his mother was Carrie Lee Towns, and that said facts appeared to have been recorded many years ago, which said certificate was thereafter filed with a delayed certificate of birth covering John Towns, as supporting evidence; and at said time and place, the said C. J. Adams also signed a certificate as a Notary Public for the State of Alabama, County of Dallas, that he had examined the family Bible in the possession of Carrie Lee Towns, published by Collins Clear Type Press, [fol. 15] in which the year of publication was not shown, and that the Bible showed Samuel C. Towns to have been born at Pleasant Hill, Alabama, on June 9, 1930, and that the name of his father was Walter Towns and the name of his mother was Carrie Lee Towns, and that said facts appeared to have been recorded many years ago, which said certificate was thereafter filed with a delayed certificate of birth covering Samuel C. Towns, as supporting evidence; and at said time and place the said C. J. Adams also signed a certificate as Notary Public for the State of Alabama, County of Dallas, that he had examined the family Bible in the possession of Carrie Lee Towns, published by Collins Clear Type Press, in which the year of publication was not shown, and that the Bible showed Sammy B. Towns to have been born at Pleasant Hill, Alabama, on June 9, 1930, and that the name of his father was Walter Towns and the name of his mother was Carrie Lee Towns, and that said facts appeared to have been recorded many years ago, which said certificate was thereafter filed with a delayed certificate of birth covering Samuel B. Towns, as supporting evidence;

(7) That on or about the 10th day of May, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Walter Towns and Carrie Lee Towns exhibited to Local Board No. 2, Dallas County, Alabama, certified copies of delayed certificates of birth

covering, respectively, Samuel B. Towns, Samuel C. Towns and John Towns, purporting to show that their respective dates of birth were June 9, 1930, June 9, 1930, and October 9, 1928, and represented to said Local Board that said birth certificates reflected the truth;

(8) That on, to wit, the 10th day of June, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and [fol. 16] within the jurisdiction of this Court, Carrie Lee Towns made a statement to Local Board No. 2, Dallas County, Alabama, in substance, that Samuel B. Towns and Samuel C. Towns were born on June 9, 1930, and that John Towns was born on October 9, 1928, and that none of them was then liable for service under said Act;

(9) That on, to wit, the 10th day of June, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Walter Towns made a statement to Local Board No. 2, Dallas County, Alabama, in substance, that Samuel B. Towns and Samuel C. Towns were born on June 9, 1930, and that John Towns was born on October 9, 1928, and that none of them was then liable for service under said Act;

(10) That on, to wit, the 10th day of June, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Samuel B. Towns made a statement to Local Board No. 2, Dallas County, Alabama, in substance, that he was born on June 9, 1930, and was not then liable for service under said Act;

(11) That on, to wit, the 10th day of June, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Samuel C. Towns made a statement to Local Board No. 2, Dallas County, Alabama, in substance, that he was born on June 9, 1930, and was not then liable for service under said Act;

(12) That on, to wit, the 10th day of June, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and

[fol. 17] within the jurisdiction of this Court, John Towns made a statement to Local Board No. 2, Dallas County, Alabama, in substance, that he was born on October 9, 1928, and was not then liable for service under said Act;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Albert J. Tully, United States Attorney, Southern District of Alabama.

A True Bill: J. A. Bates, Foreman.
Filed in open Court June 27, 1945. Virgil C. Griffin, Clerk.

In United States District Court

Demurrers—Filed July 18, 1945.

[Title Omitted]

Comes the defendant, C. J. Adams, Alias Charlie Adams, and demurs to the indictment and each count thereof separately and severally on the following separate and several grounds, separately and severally:

1. Said count fails to allege sufficient facts to constitute an offense.

2. Said count fails to aver sufficient facts to show that the defendants violated the Selective Service Training and Service Act or any regulation or directive issued by any authority thereunder.

[fol. 18] 3. Said count fails to aver or set forth any duty resting upon the defendants under the Selective Training and Service Act to cause their children, Samuel B., Samuel C., and John Derry Towns to register with Local Board No. 1 or Local Board No. 2, Dallas County, Alabama.

4. For that said count fails to aver sufficient facts to show that the defendants knowingly or intentionally aided or abeted Samuel B., Samuel C. and John Derry Towns in evading registration with Local Board No. 1 or Local Board No. 2 in Dallas County, Alabama.

5. For that said count fails to allege sufficient facts to show that the defendants intentionally and knowingly aided and abeted Samuel B., Samuel C. and John Derry Towns in evading registration with Local Board No. 1 or Local Board No. 2 of Dallas County, Alabama.

6. For that Section 311, Title 50 of the Selective Training and Service Act places the defendants under no duty or obligation regarding the registration of Samuel B., Samuel C. and John Derry Towns with Selective Service Local Board having jurisdiction over them in Dallas County, Alabama.

7. For that the defendants had no notice by publication or otherwise that they were under duty or obligation to force the registration of Samuel B., Samuel C., and John Derry Towns.

8. For ought appearing from said law, the defendants were under no duty or obligation to do anything or refrain from doing anything toward the registration of Samuel B., Samuel C., or John Derry Towns.

9. For that the allegations of said count are mere conclusions and are not based upon sufficient facts to [fol. 19] show that the defendants unlawfully and knowingly aided, counseled or abeted Samuel B. Towns, Samuel C. Towns and John Derry Towns to unlawfully or knowingly fail or neglect to present themselves for and to submit for registration with Local Board No. 1 or Local Board No. 2, Dallas County, Alabama.

10. For that said indictment fails to set forth sufficient facts to show that Samuel B., Samuel C. and John Derry Towns were 18 years of age and subject to registration by Local Board No. 1 or Local Board No. 2 of Dallas County, Alabama.

11. For that said count fails to aver sufficient facts to show that Samuel B., Samuel C. and John Derry Towns were between the ages of 18 and 65 years on the 19th day of September, 1944.

12. For that said count fails to aver sufficient facts to show that Samuel B., Samuel C., and John Derry Towns were between the ages of 18 and 65 years on the 10th day of June, 1944.

13. For that said count fails to aver sufficient facts to show that Samuel B., Samuel C. and John Derry Towns were between the ages of 18 and 45 years, and therefore subject to registration under the Selective Training and Service Act on the 19th day of September, 1944.

14. For that said count fails to aver sufficient facts to show that the defendants during the period of time between the first day of January, 1942 and the 10th day of January, 1945, unlawfully, knowingly and feloniously conspired together with Samuel B., Samuel C. and John Derry Towns to commit an offense against the United States.

15. For that said count fails to aver sufficient facts to [fol. 20] show that the defendants did any unlawful act to cause Samuel B. Towns to evade registration under the Selective Training and Service Act.

16. For that said count fails to aver sufficient facts to show that the defendants did any unlawful act to cause Samuel C. Towns to evade registration under the Selective Training and Service Act.

17. For that said count fails to aver sufficient facts to show that the defendants did any unlawful act to cause John Derry Towns to evade registration under the Selective Training and Service Act.

18. For that said count fails to aver sufficient facts to show that Samuel B. Towns was born prior to June 9, 1930.

19. For that said count fails to aver sufficient facts to show that Samuel C. Towns was born prior to June 9, 1930.

20. For that said count fails to aver sufficient facts to show that John Derry Towns was born prior to October 9th, 1928.

21. For that said count alleging that Samuel B. Towns was born prior to June 9, 1930 is based upon insufficient evidence and hearsay testimony and not the best evidence.

22. For that said count alleging that Samuel C. Towns was born prior to June 9, 1930 is based upon insufficient evidence and hearsay testimony and not the best evidence.

23. For that said count alleging that John Derry Towns was born prior to October 9, 1928, is based upon insufficient evidence and hearsay testimony and not the best evidence.

[fol. 21] 24. For that said count fails to aver sufficient facts to show that the defendants knowingly and intentionally procured a delayed birth certificate for the purpose of assisting, aiding or abeting Samuel B., Samuel C., and John Derry Towns in evading registration under the Selective Service and Training Act.

25. For that said count fails to aver sufficient facts to show that any alleged statement made by the defendants to Local Board No. 1 or Local Board No. 2 was false or made with intention to assist anyone in evading registration.

26. For that said count fails to aver sufficient facts to show any direct relationship or acquaintanceship prior to March 25, 1944 between the defendants Walter Towns and Carrie Lee Towns and the defendant C. J. Adams.

27. For ought appearing from said count, the defendant, C. J. Adams had no knowledge or information about the ages of Samuel B., Samuel C. and John Derry Towns prior to the date of the delayed birth certificate or application therefor made out by him.

28. For that said count fails to aver any facts to show that the defendant, C. J. Adams even knew or was acquainted with Samuel B., Samuel C. and John Derry Towns prior to the date of the alleged affidavit for a delayed birth certificate prepared by him at defendant Carrie Lee Towns' request.

29. For that said count fails to aver any facts at all to show that the defendant, C. J. Adams, had any connection with, information of or interest in the family affairs of the defendants Walter Towns and Carrie Lee Towns prior to March 25th, 1944.

30. For that said count fails to aver sufficient facts to show that the defendant C. J. Adams was even [fol. 22] acquainted with or had any knowledge or information about the defendants Walter Towns and Carrie

Lee Towns or any member of their family prior to the 25th day of March, 1944.

31. For that said count fails to aver sufficient facts to show that there was a mutual understanding between the defendants to prevent Samuel B., Samuel C., and John Derry Towns from registering with their Local Boards in Dallas County, Alabama.

32. For that said count fails to aver sufficient facts to show that the defendants entered into a mutual agreement to commit an offense against the United States.

33. For that said count fails to aver sufficient facts to show that the defendants entered into a mutual agreement with a single design to accomplish a common purpose.

34. For that said count fails to aver sufficient facts to show an unlawful agreement between the defendants and a subsequent overt act on their part in furtherance of said agreement.

35. For that said count fails to aver an overt act done by the defendants or either of them in pursuance of and to effectuate the object of the alleged conspiracy.

36. For that said count fails to aver when said alleged conspiracy was entered into between the defendants.

37. For that said count fails to aver or set forth what overt act the defendant Walter Towns did in furtherance of said alleged conspiracy.

38. For that said count fails to aver what overt act the defendant, C. J. Adams, did in furtherance of said alleged conspiracy.

[fol. 23] 39. For that said count fails to aver what overt act the defendant, Carrie Lee Towns, did in furtherance of said alleged conspiracy.

40. For ought appearing from said count, the alleged statement made by Carrie Lee Towns to Local Board No. 2 in Dallas County, Alabama, was in fact true.

41. For that said count fails to aver with certainty the connection between the alleged overt act and the alleged conspiracy entered into by the defendants.

42. For that the time and place of said conspiracy is not set forth and sufficient facts are not set forth to show any casual connection between said alleged conspiracy and said alleged overt act.

43. For that the Selective Service and Training Act places the responsibility upon the person obligated to register and no duty rested upon the defendants regarding or concerning the registration of Samuel B., Samuel C. and John Derry Towns.

44. For that said count does not contain sufficient facts to show that the defendant, C. J. Adams, entered into a combination with Carrie Lee Towns and Walter Towns to accomplish a criminal purpose or some purpose not criminal by criminal means.

45. For that said count affirmatively shows that the defendant, C. J. Adams, was merely acting in his official capacity as a notary public in taking the statement or affidavit of the defendant Carrie Lee Towns in the preparation of said delayed birth certificate.

46. For that said count fails to aver sufficient facts to show that the defendant C. J. Adams had any [fol. 24] knowledge or information at the time he helped prepare the delayed birth certificates of Samuel B., Samuel C. and John Derry Towns at Carrie Lee Towns' request that the statements made by Carrie Lee Towns were not true.

47. For that said count fails to aver sufficient facts to show that there was a combination agreement or understanding between the defendant C. J. Adams and the defendant Carrie Lee Towns at the time the defendant C. J. Adams prepared the delayed birth certificates for Samuel B., Samuel C., and John Derry Towns at the request of the defendant Carrie Lee Towns for the purpose of committing an unlawful or criminal act.

48. For ought appearing from said count the defendant C. J. Adams had no prior knowledge or information of the ages of Samuel B., Samuel C. and John Derry Towns at the time he prepared said delayed birth certificates for them at the request of the defendant Carrie Lee Towns.

49. For that said count fails to aver sufficient facts to show that the defendant C. J. Adams had any knowledge or information at the time he prepared the delayed birth certificates for Samuel B., Samuel C. and John Derry Towns at the request of the defendant, Carrie Lee Towns that same were to be used in helping them evade registration with Local Board No. 1 and No. 2, in Dallas County, Alabama.

50. For that said count fails to aver sufficient facts to show that the defendant C. J. Adams had any intention whatsoever to enter into a conspiracy with the defendants Carrie Lee Towns and Walter Towns to do any unlawful or criminal act.

51. For that said count fails to aver sufficient facts to show that the defendant C. J. Adams had any [fol. 25] guilty intent to enter into a conspiracy with the defendant Carrie Lee Towns to do any unlawful or criminal act or to do a lawful act in an unlawful way.

Edmund Pettus By Wm. B. McCullough, Attorney for Defendant, C. J. Adams, Alias Charlie Adams.

Demurrers overruled this Oct. 1st, 1945 and deft. excepts.

John McDuffie, Judge.

[File endorsement omitted]

In United States District Court

Demurrers—Filed September 20, 1945.

[Title Omitted]

Comes the defendant, C. J. Adams, alias Charlie Adams, and files the following demurrers to the Indictment and each count thereof separately and severally on the following separate and several grounds, separately and severally, with those heretofore filed:

1. That said count fails to set out an agreement to defraud the United States Government and facts showing that the parties charged were in a position to commit fraud and also failed to allege the overt act or acts which constitute said fraud.

2. That said count fails to allege any overt act on the part of C. J. Adams, alias Charlie Adams.

[fol. 26] 3. That said count fails to set forth facts so distinctly as to advise the accused of the charge which he has to meet fully enough to give him a fair opportunity to prepare his defense, so particularly as to enable him or avail himself of a conviction or acquittal in defense of another prosecution for the same crime, and so clearly that the Court, upon an examination of the Indictment, may be able to determine whether or not under the law, the facts there stated are sufficient to support conviction.

4. That said count does not allege fully and clearly the criminal or illegal purpose.

T. G. GAYLE, Attorney for C. J. Adams, alias Charlie Adams. T. G. Gayle.

Copy to Mr. Albert Tully, Sept. 24, 1945.

Virgil C. Griffin, Clerk.

Demurrers overruled this Oct. 1st, 1945.
John McDuffie.

Defendant excepts.

[file endorsement omitted]

[fol. 27] In the United States District Court

Motion to Quash Indictment—Filed September 20, 1945

[Title omitted]

Comes C. J. Adams, alias Charlie Adams, and moves the Court to quash the indictment and each count thereof in case #11470, and for grounds of motion, says:

1. That he, the said C. J. Adams, alias Charlie Adams, was summoned by the United States of America as a witness for the said Government in the case of the United States of America vs. John Derry Towns, alias John Towns, alias J. D. Towns, and Samuel B. Towns, alias Sammy B. Towns, alias Samuel Towns, alias Sammy Towns, alias Isaac Town, alias Isham Town, alias Bit Towns, alias Buddy Towns, and Samuel C. Towns, alias

Sammy C. Towns, alias Samuel Towns, alias Sammy Towns, alias Isaac Town, alias Isham Town, alias Bit Towns, alias Buddy Towns, in case numbers 11420, 11430, and 11429, and that he was placed on the stand in the above named and numbered cases and did testify for the said United States of America and at the time he was placed on the stand he was not advised by the Honorable Judge of said Court of his rights not to testify to anything that might incriminate him, and that after testifying in behalf of United States of America in the above named and numbered cases he was jointly indicted with Walter Towns and Carrie Lee Towns without being advised of his Constitutional rights.

2. That the said Honorable Judge failed to advise him of his Constitutional rights that he did not have to testify to any evidence that might incriminate him, and that he did give testimony in said cases as a witness on behalf of the United States of America, which said testimony was incriminating to him.

3. That said Honorable Judge failed to advise him that [fol. 28] if he should testify in the above named and numbered cases that said testimony could be used against him in a subsequent trial or indictment and that he did give testimony in the above numbered and named styled cases and was subsequently indicted with Walter Towns and Carrie Lee Towns under case No. 11470.

T. G. Gayle, Attorney for C. J. Adams, alias Charlie Adams.

Copy to Mr. Albert Tully, September 24, 1945.
Virgil C. Griffin, Clerk.

Motion overruled this Oct. 1st, 1945. Deft. excepts.
John McDuffie, Judge.

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING DEMURRERS AND MOTION TO QUASH—Filed October 1, 1945

[Title omitted]

This cause comes on to be heard on the demurrers to the indictment and the motion to quash the indictment, the same being argued in open Court by Attorneys of Record and being considered by the Court.

It is ordered by the Court that the demurrers to the indictment be, and the same hereby are, overruled to which order the Defendants except.

[fol. 29] It is further ordered that the motion of defendant Adams be, and the same hereby is, overruled, to which the defendant Adams excepts.

Done at Mobile this the 1st day of October, 1945.

John McDuffie, Judge.

[File endorsement omitted]

Virgil C. Griffin, Clerk, by Minnie Pearl Cox, Deputy Clerk.

IN UNITED STATES DISTRICT COURT

ARRAIGNMENT AND PLEA—November 5, 1945

[Title omitted]

Comes the United States of America by its Attorney, the Honorable Albert J. Tully, and also comes the defendant, C. J. Adams, alias Charlie Adams in his own [fol. 30] proper person and by his Attorney, the Honorable T. G. Gayle, who being arraigned in open Court and the charges against him being explained to him, pleads not guilty thereto.

IN UNITED STATES DISTRICT COURT

JURY EMPANELED

[Title omitted]

WEDNESDAY MORNING, NOVEMBER 7TH, A. D., 1945.

Court met pursuant to adjournment. Present the Honorable John McDuffie, Judge, presiding.

It appearing to the Court that the defendant, C. J. Adams alias Charlie Adams was arraigned in open Court in his own proper person on November 5th, 1945 and by his Attorney, the Honorable T. G. Gayle entered a plea of not guilty.

Now on this the 7th day of November, 1945, comes the United States of America by its Attorneys, the Honorable Albert J. Tully and the Honorable Alvin McConnell and also comes the defendant, C. J. Adams alias Charlie Adams in his own proper person and by his Attorney, the Honorable T. G. Gayle into open Court for trial, and

Thereupon, to try the issue joined between the United States of America and the defendant, C. J. Adams alias Charlie Adams comes a jury of good and lawful men, namely, J. H. Huckaby, Foreman, and eleven others, who are duly empaneled and sworn according to law, and upon the agreement of the United States of America and the defendant, with the approval of the Court, that the same be done without prejudice to the defendant, one alternate juror was selected and sworn in this case.

[fol. 31] Witnesses are examined and the case is continued until tomorrow morning at 9:30 A.M.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING COUNTS 1, 3 and 5 WITHDRAWN AS TO ADAMS.

[Title omitted]

On motion of the Honorable Alvin McConnell, United States Attorney, that he be allowed to withdraw Counts 1, 3 and 5 of the indictment as to C. J. Adams alias Charlie Adams, said motion being made in Open Court,

It is ordered by the Court that Counts 1, 3 and 5 of the indictment be, and the same hereby are, allowed withdrawn as to C. J. Adams alias Charlie Adams.

Made this the 8th day of November, 1945.

John McDuffie, U. S. District Judge.

Filed and entered this the 8th day of November A. D. 1945.

Virgil C. Griffin, Clerk, by Minnie Pearl Cox, Deputy Clerk.

IN UNITED STATES DISTRICT COURT

VERDICT AND JUDGMENT

[Title Omitted]

THURSDAY MORNING, NOVEMBER 8TH, A. D., 1945

Court met pursuant to adjournment. Present the Honorable John McDuffie, Judge, presiding.

[fol. 32] The trial of this case is resumed.

Now comes the United States of America by their Attorneys, Albert J. Tully and Alvin McConnell and also comes the defendant, C. J. Adams alias Charlie Adams into open Court in his own proper person and by his Attorney, the Honorable T. G. Gayle.

Now on motion of the United States Attorneys, it is ordered that Counts One, Three and Five of the indictment be withdrawn.

Now comes a jury of good and lawful men, namely, J. H. Huckaby, Foreman, and eleven others, who were duly empaneled and sworn according to law on November 7th, 1945, and who having heard the evidence and the charge of the Court upon their oaths do say:

"We the Jury find the Defendant C. J. Adams Guilty as charged in the indictment.

J. H. Huckaby, Foreman."

It is, therefore, ordered and adjudged by the Court that the defendant, C. J. Adams alias Charlie Adams is guilty as charged in the indictment and that the passing of sentence upon the defendant, C. J. Adams alias Charlie Adams be, and the same hereby is, postponed until November 9th, 1945.

[fol. 33] IN UNITED STATES DISTRICT COURT

ORDER OF SENTENCE—Filed Nov. 9, 1945.

[Title Omitted]

It appearing to the Court that the defendant, C. J. Adams alias Charlie Adams, entered a plea of not guilty in his own proper person in open Court and by his At-

torney, the Honorable T. G. Gayle on November 5th, 1945, and on November 8th, 1945, a jury and verdict of guilty was returned against the defendant, C. J. Adams alias Charlie Adams, and the passing of sentence upon the defendant, C. J. Adams alias Charlie Adams was postponed.

Now on November 9th, 1945, comes the defendant, C. J. Adams alias Charlie Adams in his own proper person into open Court for sentence, and the defendant, C. J. Adams alias Charlie Adams being now asked whether he had anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court,

It is now ordered by the Court that the defendant, C. J. Adams alias Charlie Adams be, and he hereby is, sentenced to be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one (1) year and one (1) day, and to pay a fine of two hundred and fifty ($250.00) dollars, the execution of said sentence to begin on December 10th, 1945, and to stand committed until such fine shall be paid, or until the defendant, C. J. Adams alias Charlie Adams shall be otherwise discharged by due course of law.

It is further ordered by the Court that jurisdiction in this cause be, and the same hereby is, retained through the ensuing Term of Court.

[fol. 34] It is further ordered that the Clerk deliver a certified copy of this judgment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Made at Selma, Alabama, this the 9th day of November A. D., 1945.

John McDuffie, United States District Judge.

IN UNITED STATES DISTRICT COURT

MOTION FOR NEW TRIAL

[Title Omitted]

Comes C. J. Adams alias Charlie Adams and moves the Court to set aside the verdict in the above styled and numbered case and for grounds of motion, says:

1. That said verdict is contrary to the evidence in said case.

2. That said verdict is contrary to the law in said case.

3. That said verdict is contrary to the law and the evidence in said case.

4. That said Court erred in that it admitted in evidence a birth certificate which was registered in the name of Mary and Sally Peterson, which was testified to by the mother, Mary Lizzie Peterson, as being and always being [fol. 35] known as Ruby and Reba Peterson and that said Solicitor failed to show that in that neighborhood or surrounding that there were not any other twins born of the same father and mother, Mary Lizzie Peterson and Riley Peterson, and that ought appears in this case that there could have been other twins born to parents by the name of Mary Lizzie Peterson and Riley Peterson in the same community.

5. That said Solicitor failed to show or to prove that Mary and Sally Peterson were the same as Ruby and Reba Peterson.

6. That said Court erred in allowing in evidence a birth certificate of Isham and Ishom Towns to be introduced in evidence for that said United States failed to show that Isham and Ishom Towns were the same as Samuel B. Towns and Samuel C. Towns, and further that Isham and Ishom Towns are one and the same as Samuel B. Towns and Samuel C. Towns.

7. That said United States in its proof failed to prove that Ishom and Isham Towns were one and the same twins.

8. That said United States Government also failed to prove that there were no other parents by the same name in said community that could have had twins and named them Isham and Ishom Towns in that community or neighborhood.

9. That said Court failed to give certain written charges which were requested by the defendant, C. J. Adams alias Charlie Adams, and which number of said charges which were refused are at this time unknown to said defendant, C. J. Adams alias Charlie Adams.

10. That said United States Government failed in every respect to produce any evidence to show that the defendant, C. J. Adams alias Charlie Adams knowingly entered [fol. 36] into any conspiracy to aid or abet Samuel B. Towns, Samuel C. Towns and John Towns, to avoid registration.

11. That said Court failed to show any connection whatsoever between Carrie Lee Towns, Walter Towns, Samuel B. Towns, Samuel C. Towns and John Towns in regard to a conspiracy by the defendant, C. J. Adams alias Charlie Adams, to assist them in trying to, knowingly, unlawfully aid and abet Samuel B. Towns, Samuel C. Towns and John Towns to avoid registration under the Selective Service Act.

12. That said United States failed in every respect to introduce any evidence of any kind, or character that the jury could infer that the defendant, C. J. Adams alias Charlie Adams, was a party to any conspiracy.

13. That also said United States Government in said indictment elected a date on which said overt act was committed by said defendant, C. J. Adams alias Charlie Adams, and they failed to introduce any evidence of any kind to show that said C. J. Adams alias Charlie Adams committed any act under the said allegations in said indictment in anyway to aid or abet Samuel B. Towns, Samuel C. Towns and John Towns to avoid registration.

14. That said evidence failed in all respects to show any connection or any agreement or overt act by any parties to connect the said defendant, C. J. Adams alias Charlie Adams, in either to aid or abet or knowingly assist said Samuel B. Towns, Samuel C. Towns and John Towns to avoid or fail to register as required under the Selective Service Act.

15. That the said United States Government failed to introduce any evidence to show that the defendant, C. J. Adams alias Charlie Adams, had any way or any knowledge of or knew for what purpose the said affidavits were [fol. 37] to be used, but on the contrary the evidence of C. J. Adams alias Charlie Adams, was uncontradictory either by implication or direct testimony to the evidence that he had any knowledge of any kind or description

relative to what use that said affidavits were to be used for.

16. That said United States Government failed to prove in any way, act, conversation, association, meeting, seeing, being with, associating with said Walter Towns, Carrie Lee Towns, Samuel B. Towns, Samuel C. Towns and John Towns, or being visited by said Walter Towns, Carrie Lee Towns, Samuel B. Towns, Samuel C. Towns and John Towns, or being in the neighborhood of said Walter Towns, Carrie Lee Towns, Samuel B. Towns, Samuel C. Towns and John Towns that might be in any to implicate him as co-conspirator.

17. That said evidence by the United States Government failed in every respect to show either by implication or direct evidence or otherwise any connections that said C. J. Adams alias Charlie Adams might have derived from forming said co-conspiracy to avoid the Selective Service Act.

18. That from said evidence in the case either by implication or direct evidence the United States Government failed to show that the defendant, C. J. Adams alias Charlie Adams, actual or knowingly conspired with said Walter Towns, Carrie Lee Towns, Samuel B. Towns, Samuel C. Towns and John Towns to violate the Selective Service law.

T. G. Gayle, Attorney for C. J. Adams alias Charlie Adams, U. S. District Court, Sou. Dist. Ala., Filed in Clerk's Office, Nov. 13, 1945, Virgil C. Griffin, Clerk.

[fol. 38] IN UNITED STATES DISTRICT COURT

AMENDED MOTION FOR NEW TRIAL

[Title Omitted]

Comes C. J. Adams alias Charlie Adams with leave of the Court first had and obtained and amends his motion to set aside the verdict in the above styled and numbered case and for grounds of motion, says:

1. That the Court erred in failing to give the following

charges as requested by the Defendant C. J. Adams alias Charlie Adams:

"2. I charge you Gentlemen of the Jury that if you believe the evidence in this case you cannot convict the defendant, C. J. Adams alias Charlie Adams in Count 2 of said indictment.

4. I charge you Gentlemen of the Jury that if you believe the evidence in this case you cannot convict the defendant, C. J. Adams alias Charlie Adams, in Count 4 of said indictment.

6. I charge you Gentlemen of the Jury that if you believe the evidence in this case you cannot convict the defendant, C. J. Adams alias Charlie Adams, in Count 6 of said indictment.

7. I charge you Gentlemen of the Jury that if you believe the evidence in this case you cannot convict the defendant, C. J. Adams alias Charlie Adams, in Count 7 of said indictment.

9. I charge you Gentlemen of the Jury before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 2 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, unlawfully [fol. 39] and knowingly aid, counsel and abet the said Samuel B. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2, Dallas County, Alabama.

11. I charge you Gentlemen of the Jury before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 4 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said C. J. Adams alias Charlie Adams did on to wit: the 19th day of September, 1944, unlawfully and knowingly aid, counsel and abet the said Samuel C. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2, Dallas County, Alabama.

16. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie

Adams, under Count 2 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty from the evidence that the said C. J. Adams alias Charlie Adams did on to wit: the 19th day of September, 1944, unlawfully aid, counsel and abet the said Samuel B. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2, in Dallas County, Alabama.

18. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 4 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty from the evidence that the said C. J. Adams alias Charlie Adams did on to wit: the 19th day of September, 1944, unlawfully aid, counsel and abet the said Samuel C. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

[fol. 40] 20. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 6 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty from the evidence that the said C. J. Adams alias Charlie Adams did on to wit: the 19th day of September, 1944, unlawfully aid, counsel and abet the said John Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2, in Dallas County, Alabama.

23. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under count 2 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said defendant, C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, unlawfully aid the said Samuel B. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

25. I charge you Gentlemen of the jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 4 of said indictment, you must be

satisfied beyond a reasonable doubt and to a moral certainty that the said defendant, C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, unlawfully aid the said Samuel C. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

27. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under count 6 of said indictment you must be satisfied beyond a reasonable doubt and to a moral certainty that the said defendant, C. J. Adams alias Charlie [fol. 41] Adams, did on to wit: the 19th day of September, 1944, unlawfully aid the said John Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

30. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 2 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said defendant, C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, knowingly aid the said Samuel B. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

32. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 4 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said defendant, C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, knowingly aid the said Samuel C. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

36. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 2 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral cer-

tainty that the said defendant, C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, counsel and abet with the said Samuel B. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

38. I charge you Gentlemen of the Jury that be-
[fol. 42] fore you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 4 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said defendant, C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, counsel and abet with the said Samuel C. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

40. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 6 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said defendant, C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, counsel and abet with the said John Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

41. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams, alias Charlie Adams, under Count 7 of said indictment, you must be satisfied from the evidence beyond a reasonable doubt and to a moral certainty that said defendant, C. J. Adams alias Charlie Adams, did at the time he took the acknowledgements of Carrie Lee Towns, Samuel B. Towns, Samuel C. Towns and John Towns, and at the time he certified to the dates as shown by the Bible he had knowledge that said affidavits and acknowledgments were to be used for the purpose to aid and assist the said Samuel B. Towns, Samuel C. Towns and John Towns to fail to present themselves for registration at the proper time and place as alleged in said indictment.

42. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias

[fol. 43] Charlie Adams, under Count 7 of said indictment, you must believe beyond a reasonable doubt and to a moral certainty that acts as set out in Paragraph 6 of said indictment were committed with the knowledge that they were to be used in order to aid and abet Samuel B. Towns, Samuel C. Towns and John Towns to commit an offense against the United States by violating Sec. 11 of said Act.

43. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, you must be convinced from the evidence beyond a reasonable doubt that the said C. J. Adams alias Charlie Adams entered into a conspiracy as charged in Count 7 of said indictment prior to June 11, 1944."

T. G. Gayle, Attorney for C. J. Adams, alias Charlie Adams, U. S. District Court Sou. Dist. Ala. Filed in Clerk's Office Nov. 23, 1945. Virgil C. Griffin, Clerk.

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING AMENDED MOTION FOR NEW TRIAL—Filed November 21, 1945

[Title Omitted]

This cause coming on to be heard on a motion to set aside the verdict and grant a new trial, after argument and due consideration, the Court is of the opinion that the motion should be denied.

It is therefore ordered, adjudged and decreed that the [fol. 44] motion of defendant Adams as amended be and the same is overruled, to which action of the Court the defendant duly excepts.

Done at Mobile, Alabama, this 21st day of November 1945.

John McDuffie, District Judge.

(File endorsement omitted.)

In United States District Court

Notice of Appeal and Grounds of Appeal

[Title Omitted]

Name and address of Appellant: C. J. Adams alias Charlie Adams, 821 First Avenue, Selma, Alabama.

Name and address of Appellant's attorney: T. G. Gayle, 1104½ Water Avenue, Selma, Alabama.

Offense: That Walter Towns and Carrie Lee Towns and C. J. Adams alias Charlie Adams did unlawfully, knowingly, willfully and feloniously conspire together and/with said Samuel C. Towns, Samuel B. Towns and John Towns and others unknown, to commit offenses against the United States by violating Section 11, of the Selective Training and Service Act of 1940, as amended.

Also, that Walter Towns, Carrie Lee Towns and C. J. Adams alias Charlie Adams did unlawfully, knowingly aid, counsel and abet said Samuel C. Towns, Samuel B. Towns [fol. 45] and John Towns to fail to register under the Selective Training and Service Act of 1940, as amended.

Date of Judgment: November 8, 1945.

Brief description of Judgment or Sentence: $250.00 fine and sentenced to one year and a day.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Fifth Circuit from the judgment above mentioned on the grounds set forth below.

C. J. Adams, Appellant.

Dated: November 21st, 1945.

U. S. District Court, Sou. Dist. Ala. Filed in Clerk's Office Nov. 23, 1945. Virgil C. Griffin, Clerk.

* * * * * * *

Grounds of appeal:

1. That the Judge failed to give the general affirmative charge as requested in written charges 2, 4, 6 and 7.

2. That the Court erred in refusing to give the following numbered written charges as requested by the Appellant, namely charges 9, 11, 16, 18, 20, 23, 25, 30, 32, 36, 38, 40, 41, 42 and 43, which charges were to the effect that the Jury would have to be convinced beyond a reasonable

doubt and to a moral certainty that C. J. Adams alias Charlie Adams was guilty on the 19th day of September, 1944, the date alleged in the indictment as being the date the crime was committed.

[fol. 46] 3. In the indictment the defendant, C. J. Adams alias Charlie Adams was charged with unlawfully, knowingly aid, counsel and abet Samuel B. Towns, Samuel C. Towns and John Towns to neglect to present themselves for registration under the Selective Service Act and set out in said indictment that the 19th day of September, 1944, as the date that said crime was alleged to have been committed.

4. That there were a number of charges setting out each element as charged in the indictment to be proven beyond a reasonable doubt that the alleged crime was committed on the date as alleged in said indictment, namely; the 19th day of September, 1944.

5. That the Court allowed in evidence a birth certificate to prove that the twins whose names were Reba and Ruby Peterson and who were born the same year as Samuel C. Towns and Samuel B. Towns, which birth certificate showed the names of the twins as Mary and Sally Peterson without the United States having proven that they were one and the same persons as Reba and Ruby Peterson and without having shown there could not have been other twins born to people in that neighborhood of the same names as shown in said certificate.

6. That the Court allowed in evidence a birth certificate as proof that the twins whose names were Samuel B. Towns and Samuel C. Towns and which birth certificate recorded them as being named Isham and Ishom Towns without showing that Isham and Ishom Towns were one and the same persons as Samuel B. Towns and Samuel C. Towns and without having shown that there could not have been other twins born to other people in that neighborhood of same names as shown in said certificate.

7. The Court erred in over-ruling numerous demurrers in said indictment.

[fols. 47-48] T. G. Gayle, Attorney for Appellant, U. S. District Court, Sou. Dist. Ala. Filed in Clerk's Office Nov. 23, 1945. Virgil C. Griffin, Clerk.

IN UNITED STATES DISTRICT COURT

ORDER FIXING BOND—Filed November 23, 1945

[Title Omitted]

The defendant, C. J. Adams alias Charlie Adams, through his attorney, Thomas G. Gayle, having this day filed his notice of appeal in the above styled cause, it is now ordered that C. J. Adams alias Charlie Adams be released from custody pending his appeal upon his giving supersedeas bond in the sum of One Thousand Dollars ($1,000.00) with good and sufficient surety to be approved by the Court.

Done at Mobile, Alabama, this 23rd day of November 1945.

John McDuffie, District Judge

Supersedeas Bond on appeal for $1,000.00 approved and filed Nov. 28, 1945 omitted in printing.

[fol. 49] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME FOR FILING BILL OF EXCEPTIONS, ETC.—Filed December 17, 1945

[Title Omitted]

The defendant-appellant, C. J. Adams alias Charlie Adams, having filed his motion praying the court to enter an order extending for a period of ninety (90) days from the date of Notice of Appeal the time within which the Bill of Exceptions may be established and the Transcript of the Record on Appeal filed, setting forth in said motion the grounds therefor, and the court having considered the same and being of the opinion that the extension of time prayed for in said motion is required in the interest of justice,

It is ordered that the time within which the Bill of Exceptions may be established and the Transcript of the [fol. 50] Record on Appeal filed be extended for a period

of ninety (90) days from the date of Notice of Appeal, filed November 23, 1945.

Made this 17th day of December 1945.

John McDuffie, Judge

(File endorsement omitted)

IN UNITED STATES DISTRICT COURT

BILL OF EXCEPTIONS—Filed March 14, 1946

Be it remembered that this cause coming on to be heard on the 7th day of November, 1945, and that being a day of a regular term of the United States District Court for the Southern District of Alabama, Northern Division, in which said district the indictment had been returned and the Defendant being present, the following proceedings were had, that is to say:—

The defendant upon being arraigned plead not guilty and upon being questioned by the Court both the United States Government and the defendant announced they were ready for trial.

MARY LIZZIE PETERSON, witness on behalf of the Government testified on direct examination, as follows: My name is Mary Lizzie Peterson. I am a sister of Carrie Lee Towns, and my husband's name is William Peterson. My name before I was married was Mary Lizzie Smiley. I have only one set of twins. Their names are Reby and Ruby. I know the twins of my sister, Carrie Lee Towns. I do not know whether their names are Sammy B. and Samuel C. Towns. They called them Bit and Buddy. I live near my sister. We live in the same community, and [fol. 51] have lived there all of our lives. I do not know exactly the year her twins were born, but they were born the same year that my twins were born. I aint knowed nothing about but one set of twins born to her. I know all of her children that are living and she only had one set of twins. That is the set of twins born the same year as mine were. The mid-wife that waited on me when my twins were born was Silla McLeod. She is now dead. My twins were born in 1923 in December. They were born at

Berlin, also known as Pleasant Hill, Alabama, and both of them were girls. My husband is a farmer.

Mr. McConnell: If the court please, I offer in evidence certified copies of birth certificates of Mary and Sally Peterson.

Mr. Gayle: Just a minute, your Honor. May I ask one question of this witness before these are offered?

Judge McDuffie: Yes, sir.

Mr. Gayle: Were these delayed birth certificates or given at the time your children were born?

A. I don't know nothing about these birth certificates. I don't have any birth certificates for any of my children.

Mr. Gayle: Then, we object.

Mr. McConnell: If the court please, they are properly certified copies of the records. They show on their face they are not delayed birth certificates, but they were filed at the time those children were born, and the children have been identified as the only twins this woman had. They are self proving.

Mr. Gayle: She states she knows nothing about them. I object on the further ground that it is not established that this is the mother of those identical children except her testimony that she is the mother.

Judge McDuffie: I cannot agree with your objection on the ground that she does not know anything about the birth certificates. They may be obtained without her knowing they were gotten.

[fol. 52] Mr. McConnell: They were filed without anything for the parents to do with them. They are filed by the midwife.

Judge McDuffie: By the midwife and doctors. The parents do not know anything about birth certificates. The parents know when the child is born. The father and mother themselves do not have to record the birth of a child. It is those who attend and who are clothed with authority and responsibility who make the record of births.

Mr. McConnell: I would like to ask one further question. Do you have any child named Mary Peterson and one named Sally Peterson?

A. I don't. I only had one set of twins. They never had but one name, Reby and Ruby.

Mr. McConnell: This is Sally and Mary.

Mr. Gayle: I object on that ground.

Mr. McConnell: I now offer them in evidence, if the court pleases.

Judge McDuffie: If they are not certificates of her twins, how do you expect them to be relevant?

Mr. McConnell: For this reason. This woman has testified she had only one set of twins, and they were born in December, 1923. Her name at that time was Smiley. She has testified that the name of the father of those twins was William Peterson, her post-office address at that time was Berlin, the birth place was Pleasant Hill, the husband's occupation was farming and that the midwife was Silla McLeod, she had no child by the name of Mary and Sally and only one set of twins. Having established the fact that the parties were identical, it is immaterial what name was given them by the midwife at the time those certificates were filed. I have a case in support of that, if the court wants it.

Judge McDuffie: I think we had this question up when the Towns boys were tried.

Mr. McConnell: Yes, sir, we did.

[fol. 53] Judge McDuffie: Who named your children, your twins?

A. I named one, and my mother named one. They never had but one name. That is the name that was given to the midwife, Reby and Ruby.

Mr. McConnell: You don't know whether the midwife gave them a name of her own?

Mr. Gayle: I object.

Judge McDuffie: Overruled.

Mr. Gayle: I except.

A. I sure don't know what name she turned in. I know what name I gave. I know I aint never owned any children by that name.

Judge McDuffie: You are using this testimony to prove not the names of those twins, but to substantiate the fact that twins were born to this witness on that date and near the date of those who were prosecuted here.

Mr. McConnell: I seek to establish definitely the date of birth of this woman's twins, I care not what their names may be. She says they were born in December, on the first Sunday in December, 1923. The certificate reads Sunday, December, 1923.

Judge McDuffie: I think that is admissible for that purpose.

Mr. Gayle: I except to your Honor's ruling.

Judge McDuffie: I think the rule is now that you don't have to take an exception.

Mr. Tully: That is correct. No exception is necessary.

Judge McDuffie: If the Court is wrong, and that error is pointed out to Appellate Court, whether you except or not, the court has done you an injury.

Thereupon, certified copy of birth certificate of Mary Peterson was marked Plaintiff Exhibit No. 1, [fol. 54] and certified copy of birth certificate of Sally Peterson was marked Plaintiff Exhibit No. 2.

I know that Carrie's twins were born first. They were born the same year as mine were, but they were born first.

On cross-examination the witness stated: My twins names have always been Reby and Ruby. They have never been known by any other name. I gave that name to the midwife at the time they were born. I had a record of the dates that my twins were born, but I aint got it now, at least I had their birth certificates, but my daddy's house got burned up and the birth certificate got burned up. I have no record except my own knowledge that they were born in 1923. I had it in the bible but the bible burned up when my daddy's house burned. I have ten children living and one dead. I do not know all of their birthdays. I know my oldest child was born in 1918 and my next oldest child was born in 1919. My youngest child is 8 years old. I could not tell you the birthdays of the others. I could not tell you how many children my sister has. I live near my sister and go to see her sometime. I don't know what month her twins were born in. I know that she had twins before mine were born. I do not know what their names were other than they called them Bit and Buddy.

On re-direct examination, the witness testified: I know she had a son named John Towns. I do not know whether he was older or younger than the twins.

The witness was thereupon excused.

WILLIAM PETERSON, witness on behalf of the Government testified on direct examination as follows: I am the husband of Mary Lizzie Peterson. I am the father of Reby and Ruby Peterson. I remember when they were born. I [fol. 55] do not have any other twins besides these. I know Water and Carrie Towns. I lived in the same community with them for sometime. They had twins whom they called Bit and Buddy. They have one set of twins to my knowledge. I know when Bit and Buddy were born. I was living in that community at that time. I know that the boys were born before my girls. I don't exactly know how long before my girls were born, that they were born, but to my understanding they were born in the same year. I know John Derry Towns. I do not know whether he is older or younger than Bit and Buddy.

On cross-examination the witness testified: I have ten living children. I cannot give you the birth dates of all of them. I can give you the birth date of my boy. He is 13 years old. I know how old this boy is because he was born the same date and the same month I was. I do not know how many children the Towns have. I live near them but I don't visit with them now. My wife doesn't visit with them either. I don't know what year Bit and Buddy were born. I think that they were born in 1923. I think that it was the same year my children were born and they were born in 1923. I don't know how long they were born before my twins were born, but do know that it was in the same year. I know that my twins were born in 1923. I do not know the year of the birth of any other of my children, but I don't have but one boy and I kept up with him. I did not keep up with the births of any other of my children like my wife did. I know that the twin girls were born in 1923. I can not tell you when any other of my children were born.

On re-direct examination the witness testified: I do not have but one boy, and I remember his age. I do not have but one set of twins and have told what their ages are.

The witness was thereupon excused.

[fol. 56] REBY PETERSON, witness on behalf of the Government testified on direct examination as follows: My name is Reby Peterson, and my mother's and father's names are Mary Lizzie Peterson and William Peterson.

I am 22 years old. I was born in 1923. I have been knowing Bit and Buddy Towns ever since I started to school. I went to school at Sandy Ridge. I do not know how old I was when I started there. Bit and Buddy started to school when I started. I do not know whether they started the same year I started or not. They were not in the same class with me. I don't know whether they were in the class ahead or behind me. I caught up with them. I was promoted in the grade they were in. I do not know when I was promoted. After I was promoted in the grade they were in I stayed in the same class with them until they stopped. I don't know when they stopped, but don't think they went to school any more after that.

On cross-examination the witness testified that: I don't know how old I was when I went to school. I graduated from Sandy Ridge. I was 19 years old when I graduated from Sandy Ridge. I was 19 years old when I graduated. I graduated year before last. They were in the same grade when they stopped. I don't know whether they started the same time I did or not. I live close to them but don't know whether they started the same year I started or not.

Q. How do you know you are 22?
A. My mother says I was 22.
Q. Then you are saying what somebody told you?

I move to exclude that on the ground it is hearsay evidence.

Judge McDuffie: I overrule your objection. I don't know how anybody here can swear they were born on such a date. They have to learn from their people; of necessity it must come that way.

[fol. 57] Mr. Gayle: I agree with you that no child knows and that is the reason we could not give a birth certificate ourselves. We have to get proof of what our age is. That is the best evidence. The mere fact that someone tells you—my mother told me how old I was—that certainly would not be the best evidence. It would have to be proven by people older than I am who knew when I was born. Her testimony is merely hearsay of what someone has told her, namely, her mother. I think that testimony is objectionable on the ground that it is

absolutely hearsay evidence and the best evidence would be a birth certificate or a doctor's certificate.

Judge McDuffie: I overrule your objection. Note an exception.

The witness was thereupon excused.

Ruby Peterson, witness on behalf of the Government testified on direct examination as follows: My name is Ruby Peterson. I am a first cousin of Bit and Buddy Towns. I went to school at Sandy Ridge. I graduated from the tenth grade there. I have known Bit and Buddy Towns ever since I was large enough to know anybody. They went to school at Sandy Ridge, but were not in the same class with me when I first started to school. They were in a class ahead of me. I do not know how many classes ahead of me they were. I never did catch up with them. My sister never did catch up with them. I disremember if she did. I know John Towns and he is older than Bit and Buddy, but I do not know how much older. He was in school at the same time, but do not know whether he was ahead or behind Bit and Buddy.

On cross-examination the witness testified: I was six years old when I started to school. I do not know whether they were ahead of me, but do know that my sister and I never did catch up with them. I am positive of that.

[fol. 58] The witness was thereupon excused.

Sam Peterson, witness on behalf of the Government testified on direct examination as follows: I live at Sardis, Pleasant Hill. I know Carrie Towns, Walter Towns, Bit Towns, Buddy Towns and John Derry Towns. I am no kin to them. I have lived in that community practically all of my life. I have some children. I have one child named Fed. I know Mary Lizzie Peterson and her husband, William Peterson. William Peterson is my uncle. I know Reby and Ruby Peterson. I was living in that community at the time Reby and Ruby Peterson were born. I recollect the occasion. I was living in that community at the time Bit and Buddy Towns were born and recollect the occasion. They were born in 1923. I recollect when my boy Fed was born. He was born August 25th, 1923. At the time he was born Bit and Buddy

Towns were already born. Reby and Ruby were not born at the time my boy Fed was born. Bit and Buddy were born before my boy Fed was born. They were born the first of the year. Bit and Buddy were born first, then Fed, then Reby and Ruby. Fed's mother was Ida Farris.

Mr. McConnell: I offer in evidence certified copy of the birth certificate of Fed Peterson, whose father's name was Sam Peterson, and whose mother's name was Ida Farris.

Judge McDuffie: What is the purpose of that?

Mr. McConnell: To establish the birth date of Fed Peterson.

Judge McDuffie: His father has done that.

Mr. McConnell: That is true.

Judge McDuffie: He has told what part of the year the others were born. I don't see what particular service that can perform. I think it is sort of cumulative.

Mr. McConnell: That is true, but here is a record [fol. 59] made prior to the present occasion, prior to these delayed birth certificates.

Judge McDuffie: I will hear from Mr. Gayle.

Mr. Gayle: I object to that on the grounds heretofore stated—I have not read that one—I don't know whether it is a delayed one or not.

Judge McDuffie: Objection overruled.

Thereupon, certified copy of birth certificate of Fed Peterson was marked Plaintiff Exhibit No. 3.

On cross-examination the witness testified: I don't know how many children I have. I have a bunch of them. There is 10 in the house now. I cannot give you any birth date of any of them except Fed. He is the only one I remember. I don't remember any others. I can give you the birth day of some of the younger ones, but not the older ones. Fed is 22 years old. I don't know how old the next one to him is, my wife knows. I didn't keep up with them. I know how old Fed is because I had to get him ready for registering. I do not know how many children the Towns have. I do not know how many children William Peterson has. I do not know how old any of their children are.

The witness was thereupon excused.

FED PETERSON, witness on behalf of the Government testified on direct examination as follows: My name is Fed Peterson. I did register for the draft. I registered in 1942. I know Bit and Buddy Towns, and John Derry Towns. I do not know how old they are. I do not know whether John Derry Towns is older than the twins. I went to school at Sandy Ridge. I was seven years old when I started. Bit and Buddy and I started to school together. Bit and Buddy got ahead of me. They got a heap ahead of me. I don't know when they stopped, but I stopped in the fifth grade. I know Reby [fol. 60] and Ruby Peterson. I don't know whether they were ahead or behind me. I started to school the same year they did.

On cross-examination the witness testified: I have 25 sisters and brothers. I have two older than I am. The youngest child is about eight months old. I don't know how many children there are at home now. I do not know any of their birthdays. I don't know what year Reby and Ruby Peterson was born. I do not know anything about the year Bit and Buddy Towns were born. I do not know how old they were when they went to school. I was seven years old. Bit and Buddy and Reby and Ruby went to school the same year I did. I don't know any of the other children's ages in my family except mine.

The witness was thereupon excused.

REV. L. S. SUMMERVILLE, witness on behalf of the Government testified on direct examination as follows: I am a minister. I live near Pleasant Hill, Alabama, and have lived there around sixty years. I have been a minister for about twenty years. I know Carrie Towns and her husband, Walter Towns. I know Mary Lizzie Peterson and her husband, William Peterson. I know Fed Peterson and Sam Peterson. Sam Peterson is Fed Peterson's daddy. I know Bit and Buddy Towns. I know Reby and Ruby Peterson. I have got some children. I have got one named Arthur. Arthur is now in Detroit, Michigan. He was born July 9, 1920. He has been in the army. I know when Reby and Ruby Peterson were born, but I have no recollection of the date. I know when Bit and Buddy Towns were born, but I don't know

the day of the month or year. I do not know whether Bit and Buddy or Reby and Ruby were born first. I do not know how far apart those two sets of twins were born. To my best recollection my boy, Arthur, was about three years or four years old when Bit and Buddy were born. [fol. 61] On cross-examination the witness testified as follows: I have got ten children in the house now. I have all together, about fourteen, I reckon. The next one to Arthur is about seventeen years old. There is some difference between these children as they have got different mothers. The one before Arthur was born in 1902, one was born in 1904. I have ten children by my second marriage. My youngest child is about 1 year old, and the next one to the youngest is about two years old. I just don't keep up with their ages, I leave that for the madam. I am not positive about any of the ages, but Arthur's. I know his age because he had to go to war and I kept up with him. I told you that I knew his age as he had to go to war and I kept up with it. I had no other children in the armed services. The other two were too old, Arthur was just in the right age for war service. None of the others were.

The witness was thereupon excused.

General Fails, witness on behalf of the Government testified on direct examination as follows: My name is General Fails. I live at a little place called Polk, it is small place close to Pleasant Hill. It is a little closer to Tyler than Pleasant Hill. I was brought up at Pleasant Hill. I left Pleasant Hill in December or the first of January. I lived in Pleasant Hill from the date I was born except for a little public work in Jefferson County. I know the whole Towns family.

Q. Do you know the twins of Walter and Carrie Towns?
A. Yes, sir. I know the two boys they said were twins.

Mr. Gayle: We object to that—to what they said—and move to exclude it.

A. They always told me they were twins. I know them.

[fol. 62] Mr. McConnell: I think that is admissible testimony.

Judge McDuffie: I don't know.

Mr. McConnell: Suppose I ask him the question this way? Do you know the two boys of Carrie Towns that are referred to as twins? He could answer that question as to whether he knew those particular boys. It is simply a matter of identity.

Judge McDuffie: Q. You didn't ask him whether they were twins or not?

Mr. McConnell: No sir. I am not trying to prove they are twins. I just want to identify the two boys I am talking about.

Mr. Gayle: It is purely hearsay evidence and is not admissible. He does not know whether they are twins.

Judge McDuffie: He was not asked whether they were twins.

Mr. Gayle: I say that is purely hearsay.

Judge McDuffie: I overrule your objection. An exception will be noted.

I know Bit and Buddy Towns, and I know Reby and Ruby Peterson. I do not know when Reby and Ruby were born. I was living at Pleasant Hill at that time. I remember seeing these children but just what time I didn't make any record and my memory is a little bit too dim in fifteen or twenty years back. I do not remember the date but remember when it happened. I have got a boy by the name of Robert. I remember when he was born. He was born September 21, 1923, and that makes him 22 years old September 21st gone. At the time my boy Robert was born, Bit and Buddy had already been born, if my memory is good, probably so, somewhere around there, it seems to me. My memory being sort of a fading flower, it seems to me like it might be possible. I am not definite about it, but to my best recollection Bit and Buddy were born about [fol. 63] the same time my boy was born. It seems to me that Reby and Ruby were born about the same time my boy was born. It seems that they were a little afterwards, but I am not sure.

On cross-examination the witness testified: I have seven living children. Robert is the oldest. The next one below him is 20 years old. Her name is Carrie Pearl. The next one is a boy and he is 18 years old. He registered when he was 18. I do not know the exact date. I don't remember the dates of any other of my children. I have a record of them in the family bible. That is the record I go by when

I say Robert was born September 21st, 1923. I had that bible only a short time when I put his name in it. I had the bible before he was born.

ALICE FAILE, witness on behalf of the Government testified as follows on direct examination: I am the wife of General Faile. I have a boy by the name of Robert born September 21, 1923. I know Reby and Ruby Peterson and Bit and Buddy Towns. I don't think I was living in that community when they were born. I don't remember when they were birthed. I heard about when they were born. At the time I heard about them I was told they were twins. I had already heard about Bit and Buddy being born at the time Robert was born. I do not know exactly how long.

On cross examination the witness testified as follows: It might have been six or seven months or it might have been less. I don't remember whether I was in the community at the time Bit and Buddy were born. I was in Kentucky about two years. I heard about them being born after I came back from Kentucky, just before my boy was born. I heard they had been born. My boy is around 22 years old. He was born 23rd day of September, if I am not mistaken. I cannot think exactly what date my next child was born. I got it put down in my bible at home. It is not exactly a bible. It is called Harps of God, one [fol. 64] of the new styled books, that is what it is. I had it around 27 years. I sot the ages down after we got the bible.

The witness was thereupon excused.

VALARE MOORE, witness on behalf of the Government on direct examination testified as follows: I am Secretary of the schools. I have the school records with me showing the registration of pupils in different classes from year to year in the various schools. I have the school record for the year beginning September 23, second grade, in 1933. I have the record for the fourth grade for the year which began in the fall of 1934. I have the record for the third and fourth grades for 1935. It is Clarke School. The books have been in my custody ever since they were made. They are in the same condition as they were when they were made.

On cross-examination the witness testified as follows: I have had custody and control of these books. They have been in the office all the time. The principal and teachers have access to those books and at times others have come and looked for birth certificates.

The witness was thereupon excused.

Louise Brown, witness on behalf of the Government testified on direct examination as follows: I am a school teacher and have been one for many years. I taught the second grade in Clarke School for the year 1933-34. I have the record of the second grade. I made that record. It was made by me at the time school began. It shows the names of the students who entered the second grade in September, 1933.

Q. Is that record made in your handwriting?

A. Yes, sir.

[fol. 65] Q. Made by you in September 1933, when that school year began?

A. It was.

Q. Was it accurately made?

Mr. Gayle: I object to that, may it please your Honor?

Judge McDuffie: What grounds?

Mr. Gayle: The books are the best evidence, not her conclusion that they were accurately made.

Mr. McConnell: How can a book show that it was accurately made?

Judge McDuffie: The book shows on its face what it is. I think if she knows the book was accurately made, she can say so. I overrule your objection.

Mr. Gayle: I except.

Q. (Mr. McConnell) Will you answer the question? Was that record accurately made?

Mr. Gayle: Same objection.

Judge McDuffie: Overruled. Note an exception.

To my best knowledge, it was accurately made.

Q. Does it show that Sammy B. Towns and Samuel C. Towns were in the second grade that year?

A. It does.

On cross-examination the witness testified as follows: It shows the ages of them for the year 1933-34. They were

born the 6th month, the 9th day of 1925, according to the information given.

The witness was thereupon excused.

Bessie B. Drewery, witness on behalf of the Government testified on direct examination as follows: I am a school teacher and have been teaching school for about 14 years. I taught the fourth grade at Clarke School for the year [fol. 66] which began in the fall of 1934. I do recognize those books for what they are. That is the school registration book that covers my fourth grade in the year beginning in the fall of 1934. I have found my class register for that particular class, and it was made in my own handwriting. The record I found was put in the back around the 19th of the month, we put it in when the six weeks closes, that is when I started this book.

Q. Was that record correctly and accurately made by you?

Mr. Gayle: We object on the same grounds.

Judge McDuffie: Overruled. Exception.

A. Yes.

It only shows a boy by the name of John Towns. It shows his mother as Mrs. C. Towns, but does not show who the father is. It does not show any address other than 708 Lawrence Street.

On cross-examination the witness testified as follows: It shows that John Towns was registered in 1934. It shows that he was 12 years old in the fourth grade, living in the City of Selma.

The witness was thereupon excused.

Corsetta Boyd, witness on behalf of the Government testified on direct examination as follows: I am a school teacher and have been so since 1920. I taught the third grade at Clarke School for the year which began in September, 1935.

Q. Is that record made by you?

A. Yes, sir.

Q. In your handwriting?

A. Yes, sir.

Q. Is that correctly and accurately made?

[fol. 67] Mr. Gayle: I object to that.

Judge McDuffie: I think it is up to the other side to find whether it was accurately made, if it can be developed on cross-examination that she didn't make it properly.

The record shows that Sammy B. Towns and Samuel C. Towns were in the third grade. It shows that their mother's name was Carrie Towns. It shows that they lived across the river, and that Pleasant Hill is across the river. I do not remember the boys. I do not remember having them, but according to the records they were.

On cross-examination the witness testified: The records show that Sammy B. Towns was born the second month, the 14th day of 1924, and that Samuel C. Towns, was born the second month, the 14th day of 1924. The children bring in that record.

Corinne Webb, witness on behalf of the Government testified on direct examination as follows: I have been a school teacher for many years. I taught the fourth grade in Clarke School in 1935. The record is in my handwriting. The record shows that I have John Towns in that grade. It shows that his parents as Carrie Towns and that his address is 710 Lawrence Street.

On cross-examination the witness testified as follows: It shows that John Towns was 12½ years old in 1935.

On re-direct examination the witness testified as follows: I do not remember him it has been about eleven years.

Mr. McConnell: If the Court please, that completes one phase of the evidence for the Government. I would like to confer with Mr. Tully and see if we cannot eliminate some.

[fol. 68] Judge McDuffie: I understand that some jurors are going home tonight and will come back in the morning. I don't want to keep you too long so that you miss your means of transportation. We usually work until dark. That is what I call first dusk. If you gentlemen prefer I am willing to let you go until morning. I want to meet your convenience as much as possible. What are your wishes? Do any of you gentlemen care to express yourselves about when you would like to quit.

Juror: I would like very much to quit now. I have transportation at 5:00 o'clock. I don't know how long they will wait for me.

Judge McDuffie: Where do you have to go?

Juror: To Demopolis.

Judge McDuffie: Do you have a way to go?

Juror: Yes, sir.

Judge McDuffie: We will take a recess until 9:30 o'clock tomorrow morning. I am not going to keep you together. You will have to stay together when we get through, but now you need not eat together or sleep together. Be very careful about any discussion of this case, and be here at 9:30 o'clock tomorrow morning.

Thereupon, court recessed at 5:10 o'clock P. M. November 7th, 1945.

At 9:30 A. M. November 8th, 1945, the proceedings were resumed.

Judge McDuffie: Now, gentlemen, are you ready to proceed?

Mr. McConnell: Yes, sir.

Judge McDuffie: All right, call the next witness.

Mr. McConnell: Call Miss Nelson, Clerk of Local Board No. 1.

Mr. Stanley Fountain, Deputy Marshall: She has not shown up.

[fol. 69] Mr. McConnell: In that case, call Miss Veach, Clerk of Local Board No. 2.

Judge McDuffie: I thought you gentlemen might agree that these boys did not register and we could save a lot of time. I don't see any need of taking the time to show that they did not register. Why they did not register is another question.

Mr. Gayle: I am not questioning the fact that they did not register. I have not questioned that fact.

Judge McDuffie: It is agreed then that they did not register. You can eliminate that part of the evidence.

Mr. McConnell: We can eliminate testimony of Miss Nelson, Clerk of Local Board No. 1, provided it is agreed that Local Board No. 1 has jurisdiction over persons within the jurisdiction of Selma?

Mr. Gayle: I will not agree to that. Local Board No. 2 is their board. Local Board No. 1 had no jurisdiction over them.

Mr. McConnell: There is some possible doubt as to that. In view of that doubt, the indictment contains a

count alleging that while these boys were actually in the City of Selma on a certain date they were then required to register at Local Board No. 1 which had jurisdiction over persons in Selma.

Judge McDuffie: If a man leaves his home place, it is his duty to go to the nearest board and register.

Mr. McConnell: I had better put Miss Nelson on the stand.

Judge McDuffie: There is no doubt about the boys not registering at either board.

Ruth Veach, witness on behalf of the Government testified on direct examination as follows: My name is Ruth Veach. I am clerk of Local Board No. 2 of Dallas County, Alabama, located in the City of Selma, Alabama. I have been clerk of that Board for some time. I have been clerk since November, 1944. I was Assistant Clerk from March 1943 to that time. This board has jurisdic-[fol. 70] tion over the territory around Pleasant Hill and Berlin. My board has three registrants whose names are Samuel C. Towns, Sammy B. Towns and John Derry Towns. They registered April 18, 1945 in Tallahassee, Florida at a special panel board. I have registration cards on these three boys. I have had a file on these three registrants for some time prior to the time I received these registration cards. The first letter that left our office was on March 21st, 1944, and it was addressed to J. D. Towns, Route 1, Berlin, Alabama, in care of Walter Towns. This letter never came back. I had our return address on it. It has never been returned to our office. I have a copy of this letter. I wrote the letter myself and Mr. L. L. Perrin signed the letter.

Mr. Gayle: I would like to ask one question. Did you mail that letter yourself?

A. Yes. I mailed all the letters from Local Board No. 2 each day.

Mr. Gayle: Do you remember this particular letter?

A. All mail that leave our office is mailed at 5:30.

Mr. Gayle: You say that you mailed that letter, and your only reason for saying that is that you mailed all the letters?

Judge McDuffie: What you are interested in is whether or not your client was connected with the failure of these

people—the question of whether he played any part in it. It seems to me that you are consuming time unnecessarily. So let the record show the Court made that remark. We are here to try cases and we will stay on if it takes until Christmas, but it seems to me that you are consuming time unnecessarily.

Mr. Gayle: I realize your Honor's position. I want to be understood that all I am trying to do in this case is to protect the interests of my client.

Judge McDuffie: I cannot see how this question [fol. 71] can hurt your client at all. Proceed with the witness, please.

Mr. Gayle: Q. You just mailed them every week, and that letter was in there?

A. What I said was that I mailed them every day.

The letter said report to this office at Local Board No. 2 Water Street, Selma, Alabama, and bring this letter with you. Do this without delay. Some report had been made to the Board prior to the writing of this letter concerning these three Towns boys. J. D. Towns did not come to the local board in answer to that letter. Walter Towns and Carrie Lee Towns came in on March 23, 1944. The letter was written on March 21, 1944. They did not bring with them at that time the birth certificate of the three boys. I did not talk with them at that time nor did I hear their conversation. On May 5, 1944 another letter was written to Walter Towns. It was mailed to him at his address in Pleasant Hill and bore the return address. It was not returned undelivered. The contents of that letter were "this is a notice for you to have your three sons come to this office, Local Board No. 2, Saturday, May 13, 1944." No one reported except Walter Towns and Carrie Lee Towns, and they came on the 10th. They did not bring the boys. At that time they had certified copy of birth certificates with them. The three birth certificates that you have are the three certified birth certificates they had with them at that time.

Mr. McConnell: I now offer in evidence birth certificate of Samuel C. Towns, birth certificate of Sammy B. Towns and birth certificate of John Towns, respectively, and ask that they be marked Exhibits 4, 5, and 6 respectively. Thereupon, birth certificates of Samuel C. Towns was marked Plaintiff Exhibit 4, birth certificate of Sammy B. Towns

was marked Plaintiff Exhibit 5; birth certificate of John Towns was marked Plaintiff Exhibit 6.

[fol. 72] Carrie Lee Towns brought the certificates in and stated these were the ages of her children as indicated on the birth certificates, and that they were to young to register. I told her at that time if there was anything else the board wanted to know from her that we would contact her again by mail. The board would not accept the birth certificates and we wrote a letter to Walter Towns on May 13th which was properly addressed and bore our return address. The letter was not returned undelivered. The contents of this letter was "This Board wrote you to come before the Local Board at their meeting, Saturday, the 13th day of May, and you came before that time. You are to come before the board Wednesday, the 17th, at 2:30 P. M. and bring all three boys with you. Do this without fail." They did not respond to this letter. We wrote them another letter on May 23rd, which was not returned or undelivered. This letter was written to Walter Towns, and bore the same address. This letter read "this is a final notice for the three boys to come before this board, Saturday, May 27th. Do not come any day except Saturday, May 27th, but don't let anything interfere with this." There was no response to that letter. The board then had subpoenas served on them by the Sheriff of Dallas County, Alabama. The subpoenas were served on Walter, Carrie Lee, John Derry, Sammy B. and Samuel C. Towns.

> A. You are hereby commanded to appear as a witness before the above named Local Board No. 2, Selma, Alabama, on the 3rd day of June, 1944, at 10:00 A. M. for the purpose of giving testimony in the case of John, Sammy B. and Samuel C. Towns. This was written to Walter. We have one written to each one. You are hereby directed to bring with you the following papers or records: any records concerning the age of children. Signed, S. H. Kendall.

They responded to the subpoenas on the 3rd of June. [fol. 73] Carrie Lee and Walter Towns came in but the boys did not come. When they came they had only the same certified birth certificates. When they appeared before the board they had the same birth certificates of

John Towns, Sammy B. Towns and Samuel C. Towns. On that occasion Walter and Carrie Lee and her son, Private W. T. Towns were present with the following board members, S. H. Kendall, W. H. King, and Mr. Stoudenmire. Carrie Lee testified and produced birth certificates for John Towns, Sammy B. Towns and Samuel C. Towns. These certificates were issued in Montgomery, Alabama on information submitted by C. J. Adams, colored Notary Public, Selma, Alabama. Carrie Lee Towns stated that the ages of Sammy B. Towns, and Samuel C. Towns, twins, born June 9, 1930, and John Towns was born October 9th 1928. The information given C. J. Adams was taken from the record in the bible kept by Carrie Lee. The age from the baptismal record was given by Carrie Lee. After the three boys failed to report today, this board told Carrie Lee and Walter to report June 10, 1944 and bring all three boys for questioning. They came one time before June 10th, Carrie Lee and Walter and her son and Mr. Robinson, her attorney, from Birmingham, came June 7th. The son's name that was with them was Pvt. W. T. Towns. Mr. Robinson was an attorney out of Birmingham. When they came I was the only one there. I gave Mr. Robinson the address of Mr. Kendall. Walter, Carrie Lee, Sammy B. and Samuel C. Towns and John Towns came on the 10th. That was the first time that the three boys were present. At that time there was present all of the board members, Mr. Kendall, Mr. King, Mr. Stoudenmire and myself. They had the birth certificates with them. I have a memorandum on what was said and done on June 10th and will read it to you. "The names of Carrie Lee's children were asked and she listed them as I have them here. She listed these as being her children from the oldest on down; Walter Lee Towns, William Lee [fol. 74] Towns—Alberta Towns came ahead of William Lee—Lula B. Towns, Mall Towns, Miller Towns, W. T. Towns, Frances Towns, John Towns, Sammy B. Towns, Samuel C. Towns—she states that two children between Frances and John are dead. She did not have the bible with her on that occasion. She stated that John was born October 9th, 1928, and the twins were born June 9th, 1930. She stated that the ages of her children are written in the bible on the day of their birth. She stated that the children Sammy B. and Samuel C. were baptised in 1940 and

their ages in this baptismal record given by her. I do not know the ages of my sister's twins. My children never played with any other children in the neighborhood, and all I know is about my own family. I paid 50¢ for each of these birth certificates. I have not paid C. J. Adams another cent, but will do so if he says so. Walter had nothing to say nor did either of the three boys. The board asked the boys how old they were and they said that they were the age their mother told them. It was made known to them and also their mother that any boy failing to register or evading the draft was subject to punishment by the Federal Court under the selective service law." I had made investigations at the County Health Board as to the birth certificates of these three boys. I checked with the dates of the years that Carrie gave me and found no boys born to Carrie Lee and Walter Towns on those dates. We then checked on the date of June 9th, 1923 and we found the record of the birth of these twins to Carrie Lee and Walter Towns on that date, but found nothing on John Towns.

Q. Did you obtain from the County Health Department at Selma a verification of the birth record covering the twins?

A. Yes.

Q. I will ask you to examine these two certificates and state whether these are the verification you then and there obtained.

A. Yes, sir.

[fol. 75] Mr. McConnell: I now offer in evidence the verification of the birth identified by the witness as that she obtained under the circumstances testified about, covering Isaac Towns and Isham Towns, who are shown to be born on June 9th, 1923, the father's name is Walter Towns, and the mother's name is Carrie Lee Towns.

Mr. Gayle: We object to that.

Judge McDuffie: That is the same proposition we had the other day. I overrule your objection and give you an exception.

Thereupon, verification of birth record of Isaac Towns was marked Plaintiff Exhibit 7 and verification of birth record of Isham Towns was marked Plaintiff Exhibit 8.

The witness was thereupon excused.

ETHEL HAWLEY, witness on behalf of the Government testified on direct examination as follows: My name is Ethel Hawley. I am Acting State Registrar of the State of Alabama. Birth certificates are filed in this office for children born in the State. The volumes are filed and bound permanently. Births have been recorded in the Central Office in Alabama, since 1908. The early records were handled through the county health officers. Since 1919 there have been local registers in the different voting precincts and the certificates go from there to the county health department, and then, between the 10th and 15th of the following month, they are all sent to the state department. Some of the county boards keep a record of the information on the birth certificates and some of them make a copy and some make a summary card showing the information. The original is always sent to Montgomery. I am the custodian of these records. A birth certificate is filed shortly after the birth of a child. A delayed certificate is one where their birth occurred before records were required to be filed or the doctor or [fol. 76] midwife failed to report the birth at the time the birth occurred. We search the records for the original birth certificate for the year before, the year given and the year following to see if there is a record and if we do not find any we allow a delayed birth certificate to be filed.

Q. As an illustration, if I told your department I was born in 1930 and wanted to file a delayed birth certificate, you would look in 1930, 1929 and 1931?

A. Yes, sir.

Q. If, as a matter of fact, I had been born in 1923, but represented to you that I was born in 1930, you would not go back to find out if I had a birth certificate in 1923?

A. No, sir.

A delayed birth certificate provides for an affidavit by one who files it, also an affidavit by some relative and it also requires some supporting documents. We do accept a certificate by one who has examined an old and ancient bible and a certificate of the custodian of baptismal records, and other documents of that sort are permissible. This particular form has been used since 1942, I believe, but we have been requiring supporting evidence

other than affidavits on the delayed birth certificates prior to that particular form, but that has been used since the early part of 1924.

Thereupon, form of delayed certificate of birth was marked Plaintiff Exhibit 9.

Mr. McConnell: I hand you Plaintiff Exhibits Nos. 4, 5, and 6 and ask you to examine them please and state whether or not these are birth certificates or certified copies thereof issued by your office, covering Samuel C., Sammy B. and John Towns?

A. They are.

[fol. 77] Samuel C. Towns' certificate was accepted for filing on March 28th, 1944, and Sammy B. Towns' certificate was accepted for filing on March 28th, 1944. John Towns's certificate was accepted for filing on March 28th, 1944. I issued certified copies on March 28th, 1944. I issue delayed birth certificates on request with the fee of fifty cents.

Q. Does each of those certificates show what each of the supporting documents were in each case?

A. Yes.

For Samuel C. Towns, bible record in the possession of Carrie Lee Towns, notarized by C. J. Adams, notary public, and baptismal record of Good Hope Church, Pleasant Hill, Alabama, signed by Cleveland McBride, custodian of records, and the record was made August 29th, 1940. There were the same records in regard to Sammy B. Towns and the same in regard to John Towns, except that the baptismal record on his was September 20, 1941. The three pieces of paper you hand me show that on one side a bible record of Sammy B. Towns, giving the date of birth as June 9, 1930, and etc. They are the original supporting documents to each one of these three birth records. They are the records in Montgomery. One relates to Sammy B. Towns, one to Samuel C. Towns and one to John Towns.

Mr. McConnell: I now offer these in evidence and ask that they be marked as Plaintiff Exhibits. Thereupon, supporting document for Sammy B. Towns was marked Plaintiff Exhibit 10, supporting document for Samuel C. Towns was marked Plaintiff Exhibit 11; and supporting

document for John Towns was marked Plaintiff Exhibit No. 12.

I examined the records at the request of the government agent for the year 1923, looking for birth records of a set of twins born to Carrie Lee Smiley and Walter [fol. 78] Towns in Dallas County, Alabama. I had the records in my office in Montgomery, covering the births.

Q. I hand you two documents and ask if they are certified copies of the records you located at that time?
A. They are.

Mr. McConnell: I now offer in evidence these two documents.

Mr. Gayle: I object to those on the same grounds that I offered to the introduction of the certificates for Isaac Towns and Isham Towns.

Judge McDuffie: The record will show objection is made and the objection is overruled. Note an exception.

Thereupon, certified copy of certificate of birth of Isaac Towns was marked Plaintiff Exhibit 13, and certified copy of certificate of birth of Isham Towns was marked Plaintiff Exhibit 14.

I personally made a search of the record of the Towns twins in March, 1945.

On cross-examination the witness testified as follows: The law was passed in 1908 requiring birth certificates. It was most lack and incomplete in the earlier years but has improved in recent years. The name on the certificate is Isaac Towns and not Sammy B. Towns. The other name is Isham Towns and not Samuel C. Towns. Of my own knowledge, I do know that they are twins born to these people.

The witness was thereupon excused.

Mr. McConnell: If the court please, I would like at this time to read to the jury the birth certificates that we have referred to. This is a certified copy of the delayed birth [fol. 79] certificate of Samuel C. Towns, presented by the mother and father to the local board. This shows the name of Samuel C. Towns, place of birth Pleasant Hill, Dallas County, Alabama, date of birth June 9, 1930, father's name Walter Towns, mother's name Carrie Lee Smiley.

Judge McDuffie: That was sworn to before the defendnt at the bar?

Mr. McConnell: Yes, sir. We have herein evidence arked as exhibits the original supporting documents, hich were filed with those respective dates. On one side has a baptismal record. Here is the one for Sammy B. owns. "State of Alabama, County of Dallas. This is to ertify that I have this day examined the records of Good lope Church located at or near Pleasant Hill, Alabama, hich shows Sammy B. Towns was baptized August 29, 940 and was 10 years of age at that time. The record nows place of birth to have been Pleasant Hill, Alabama; ate of birth June 9, 1930, name of father Walter Towns, nd name of mother, Carrie Towns. Done this 24th day f March, 1944. Cleveland McBride, Custodian of Church ecords." I now have the one for Samuel C. Towns. he information with reference to him is on the same ort of form and is signed the same date. This one overs John Towns.

I want to call Miss Hawley back for one more question.

Miss Hawley being recalled, testified as follows:

Mr. McConnell: Miss Hawley, I want you to examine ese three documents identified as Exhibits 11, 12 and , the same being the original supporting documents that ou just testified to, and tell me whether or not your office rnished or furnishes the forms, such as those supportg documents are filled out upon?

A. We do not.

On cross-examination the witness testified: They [Vol. 80] were some forms the notary public had made up mself. They are the correct forms but are just copies.

The witness was thereupon excused.

Cleveland McBride, witness on behalf of the Governent testified on direct examination as follows: I am stodian of the church records of the Good Hope Church cated at Pleasant Hill, Alabama. I have with me the ptismal records of the persons who were baptized at y church on August 29th, 1940 and on September 20, 41.

Q. Do those records show whether or not on those

dates Samuel C. Towns was baptized, Samuel B. Towns was baptized and that John Towns was baptized?

A. The record only shows where they turn it into the record. The record only carries the name of the month when they were baptized. It don't altogether carry the month. It mostly carries the name.

Q. Does your record carry the name of John Towns baptized on September 20, 1941?

A. I come in possession of the books in 1940. I found their names already in the record.

Mr. Gayle: I object if he didn't put them in himself.

Judge McDuffie: Overruled. Exception.

The record doesn't show that Sammy B. Towns was baptized on August 1940 and that he was 10 years old and it does not show that he was born in Pleasant Hill, June 9, 1930, and that his father was Walter Towns and that his mother was Carrie Lee Towns. The record doesn't carry the ages or the birth dates. I have no record like that. That is my signature to Government's Exhibit 12, 10 and 11. It was untrue about Sammy B. Towns, Samuel C. Towns and John Towns being born on such dates. The [fol. 81] mother came to me with those certificates and she told me to sit down, she didn't need any record, she had everything, and I just put down what she said. I actually filled in the forms myself. There was nothing written on the backs at the time I did that.

On cross-examination the witness testified as follows: I certified to the certificates, but the mother was the one who made them out. The records did not show what the certificates did.

The witness was thereupon excused.

Harry Davis, witness on behalf of the Government testified on direct examination as follows: My occupation for the year 1944 and the first part of 1945 was Special Agent for the F. B. I. I am now executive secretary of the Auburn Alumni Association. I resigned from the F. B. I. July 28th, this year. I participated in the effort to have the three Towns boys register and thereafter in the investigation relative to the alleged offenses committed by them and others in and about their failure to register. I went to the home of Walter and Carrie Lee Towns in and

bout that effort and investigation. I first went there eptember 14, 1944. At that time I saw Carrie Lee and Valter Towns and the three boys, Sammy B., Samuel C. nd John Towns. I talked with all of them at that time elative to that Matter. I explained to them that it had een reported to the F. B. I. that they had not registered or the draft and that they were over eighteen. I explained hat it was necessary for any male to register who had eached his eighteenth birthday. At that time they were ll gathered together there. They have a little store in ront of the house. I also explained to them the serious- ess of the offense in case they didn't register and were ver eighteen. They all insisted that the boys were not ighteen and that their birth records were listed in a bible. didn't see the bible at that time. I told them to think fol. 82] the matter over and that I would be back later. ly suggestion to them was to make sure what their ages ere, and if they were over eighteen they had better egister. I went back again on September 19th, and asked see the bible. All five of them were there, Carrie Lee, Valter, Sammy B., Samuel C. and John Towns. On both ecasions I took the chief deputy sheriff, McCain, with me. t that time they produced the bible in which the birth ecords were entered. They turned the bible over to me, nd I gave them a receipt for the bible and also gave them listing of the names of their children and their dates of rth as so taken from the bible. Carrie Lee requested that give her the list as that was the only record she had of e births of her children, and, therefore, she wanted that st; if I took the bible, she would not have any record. he said that that was the only bible she had. I talked ith her about the bible she took to C. J. Adams, and she ated that this bible was the one she had taken to him. was the same bible that was introduced in evidence here the occasion of another trial.

Q. If the court please, I want to withdraw this witness r a moment, and put the clerk on the stand, and identify e bible before I ask him any further questions about it. ay I do that, please?

Judge McDuffie: I don't think there will be any ques- on about it.

Mr. Gayle agreed that it was the bible used in the former ial.

HARRY DAVIS, recalled testified as follows: That is the bible I just referred to. I sent it to the F. B. I. laboratory at Washington. Thereafter it came into my possession and it was in the same condition as when it was sent off. It is now in the same condition as it was when I got it from Carrie. I have not made any changes in it since the last hearing.

Mr. McConnell: I now offer this bible in evidence, if the court please.

[fol. 83] Thereupon, said bible was marked Plaintiff Exhibit No. 15.

On cross-examination the witness testified as follows:

Q. At the time of this investigation at the prior trial, the trial that was prior to this, and when you spoke of introducing the bible, did you at that time have all the information relative to the Towns cases and the present cases that are now before this Court?

A. I am sorry, but I don't understand your question.

Q. I mean at the time of the trial of the former Towns cases, I believe you identified that as being the bible, at that time did you have all of the information that you have at this time in regard to this present trial? Did you have the same information or have you gotten additional information?

Mr. McConnell: I object, as calling for incompetent, immaterial and irrelevant testimony, and it calls for the conclusion of this witness.

Judge McDuffie: I overrule your objection.

A. Well, if I understand your question, you want to know if since the last trial have I conducted any further investigation?

Judge McDuffie: That is the substance of that question, as the court understands it.

A. Yes, I conducted some subsequent investigation.

Q. Did that subsequent investigation give you any further evidence other than what you had prior to this trial?

Mr. McConnell: I object to that as calling for the conclusion of this witness.

[fol. 84] Judge McDuffie: I think it does. I don't know, Mr. McConnell. This man is an expert. He knows what

evidence is, yet, the court passes on what is evidence. I think you are right.

Mr. Gayle: May I be heard a minute? If you recall, there was a motion in this case, which, I believe was heard in Mobile. At that time, there was a question as to whether this information was known to them. They used Adams in the last trial as a United States witness.

Mr. McConnell: There was a motion all right, but there was no question so far as I know, as to any further investigation or the development of any further information.

Judge McDuffie: I am going to let him answer the question.

Q. (Mr. Gayle continuing) You said you conducted an additional investigation?

A. Yes, sir.

Q. Tell the court and the jury the evidence you found, if any, in your additional investigation?

A. Well, the only investigation that I recall conducting was questioning C. J. Adams.

Q. Questioning C. J. Adams.

A. Yes.

Q. That is all you say?

A. Yes.

Q. You did not have his testimony prior to that time?

A. I had not talked with him prior to that time.

Q. Do you know whether he had been used in the former case as a witness for the United States government?

A. Yes, he was used at that time.

Q. He testified at that time, did he not?

A. Yes, sir, that is correct.

On re-direct examination the witness testified as follows: [fol. 85] Q. I will ask you whether or not any investigation with reference to the occupation of C. J. Adams was made subsequent to the last trial?

Mr. Gayle: I object.

Mr. McConnell: He brought that up. I objected to it. I think I have the right to show what investigation was made, if he showed it in part.

Mr. Gayle: That is absolutely irrelevant. His character has never been placed in evidence. It cannot be until he takes the stand.

Judge McDuffie: As far as his reputation in the com-

munity is concerned you cannot attack that until he takes the stand as a witness.

Mr. McConnell: I grant that, and made no effort to ask for this particular question until the gentlemen for the defense, over my objection, asked what investigation he made subsequent to the last trial. I have simply asked him the question—it does not make a great deal of difference and I would rather not make an issue of it.

The witness was thereupon excused.

Dr. L. T. Lee, witness on behalf of the Government testified on direct examination as follows: I am county health officer. I have been so for 24 years. I know C. J. Adams and have known him for about three years.

Q. Do you know the frequency or lack of frequency with which Adams has been to your office in connection with birth certificates in the last three years?

Mr. Gayle: I object.

Judge McDuffie: Upon what grounds?

Mr. Gayle: It calls for incompetent, irrelevant and immaterial testimony. As to the number of times or lack [fol. 86] of times he has been to Dr. Lee's office. I cannot see where that would be any evidence in this case whatsoever. Dr. Lee stated he was the county health officer. Whether Adams went to his office once or a dozen times would be immaterial as to any issues in this case.

Mr. McConnell: This defendant protests that he did not know what was going on. He says he simply acted as a notary public. I seek to show that he is thoroughly familiar with the set up of recording birth dates and the system of delayed birth certificates. I think it is highly relevant in view of what he says.

Judge McDuffie: You have here a conspiracy charge. Conspiracy is sort of like a dragnet. Any conduct touching upon an understanding on the part of the defendant, involving the act which we call an overt act, anything said by him even his movements, going here and there, even the fact that he is standing on a corner talking to somebody, all those matters can be gone into. I overrule the objection. You may have an exception.

I could not answer as to the frequency of his visits because he had the opportunity to visit the office when I was not there. I will make the statement of fact—

Mr. Gayle: I object to any voluntary statement.

Judge McDuffie: I overrule the objection. Exception noted.

Mr. McConnell: By the way, no one can object to a voluntary statement except the one who has asked the question.

He has been in my office, within my knowledge, and has obtained birth certificates, death certificates, obtained printed forms of death certificates and in my judgment he is thoroughly familiar with the making up of birth and death certificates and all the information pertaining thereto.

Judge McDuffie: I don't know about his being thorough-
[fol. 87] ly familiar—that is the conclusion of this witness. From the fact that he has been there frequently the jury may determine whether he has been thoroughly familiar.

Mr. McConnell: I have no objection to striking that from the record.

To my knowledge, I know within the last year I know of three or four times he has been in the office because I talked with him. That is the only actual contacts I had with Charlie Adams in the last year.

The witness was thereupon excused.

SAMUEL C. TOWNS, witness on behalf of the Government testified on direct examination as follows:

Judge McDuffie: I certainly do. Sam, nobody has to testify against himself, and any questions asked of you which might involve you and might indicate that you are a party to a crime, you do not have to answer. Nobody has to tell on himself. It is the duty of the government to prove a man is wrong. It is a constitutional right and if any question that is asked might bring into play your right, as I have stated, you do not have to answer such a question. Do you want to proceed now?

I am Samuel C. Towns.

Q. Samuel C. did you go before a notary public and make an oath as to your birth date for the purpose of filing a delayed birth certificate during the month of March, 1944.

Judge McDuffie: Now, Mr. McConnell, this boy is serving time now for this very thing. That is he was convicted. Whether the jury was right or wrong it is not for us to say now. He was convicted and sen- [fol. 88] tenced for his part, in effect, for his failure to register, being eligible. I wonder, having been so convicted, whether or not he could now be made a party or even a defendant for the same thing for which he has been convicted.

Mr. McConnell: He cannot be again indicted and tried for the same thing for which he was convicted, but the conviction of a substantive offense is not a bar to conviction for conspiracy. I believe that to be correct.

Mr. Tully: That is based upon the same theory on which you charge substantive offenses in the same indictment.

Judge McDuffie: A man might be indicted for conspiracy to violate the internal revenue laws. The agreement to do wrong is a crime of itself. Then, he could also be convicted for possession of illegal liquor or possession of a still, in addition to conviction for conspiracy to operate the still.

Mr. Tully: We have often had that same situation, where people have been indicted for substantive offenses, then they are followed up by a general conspiracy indictment. There have been cases prosecuted in this district.

Judge McDuffie: The question is how far this court should let this witness go or whether the court should let this witness answer, if on his answer, he could be indicted for conspiracy.

Mr. McConnell: The Court is called on, I believe, to state to this witness whether or not the answer to the question asked might tend to incriminate him. If he still elects to testify, he may do so.

Judge McDuffie: Yes.

Mr. Gayle: May I say this? Do you think he would know what was incriminating to him under the law?

Judge McDuffie: I think he is rather intelligent.

Mr. Gayle: I mean from a legal standpoint.

Judge McDuffie: Intelligent negroes understand the law. [fol. 89] I don't think he is unintelligent. I don't mean he is a good lawyer. A lot of people might not understand the technical basis of the law and yet know what

it would mean to violate the law. Now, Sam, if in the future, it were presented to a grand jury, and nobody knows whether it will be or not, you could be charged with aiding, abetting and becoming a party to conduct by your mother and your father in an effort to keep you out of the army. Now, do you want to go on and tell what you know what happened. You have a right to do it, if you are willing to waive that immunity which I have just talked about, if you are willing to go ahead, regardless of what might happen, you may do so. If you prefer not to do so, lest you make a statement that could be used against you, in that event you don't have to answer any questions. Now, what do you think about it?

A. There is one thing I would like to say. We were not trying to dodge the draft.

Judge McDuffie: I remember you said that before and the jury thought probably your mother was the main spring and didn't want her boys to go. The question is whether you helped your mother in avoiding going into the service, or whether you did not. You probably did what your mother told you to do. If you did so, you ought not to be troubled at all. I don't want you to incriminate yourself. You have been convicted for not registering, and you claimed you were not old enough to register, and that your twin brother was not, and your brother John was not. I believe they said you were fifteen when we were here before, last spring, or something like that, that you were born in 1930. Well, the jury didn't believe that, and the jury found you guilty for not registering, and following that the grand jury came along and indicted your mother and father for helping you to keep out of the army or keeping you out of the army and working with others to bring that about. That is what this case is about, against Adams; [fol. 90] your mother and your father's case is settled for that matter. It is a question now what part Adams played. Your mother and father are not being tried, nor are you being tried, but you could be tried if the grand jury indicted you for the part you played in trying to cooperate and bring about what the government calls a violation of the law. There is no question of whether you tried to keep out or not. That was all explained

to the other jury. They may have been wrong in convicting you. I am trying to get to your mind this: You may not be as intelligent as I thought you were: You don't have to testify to anything that might make you a party to something that was wrong. Do you understand that?

A. Yes, sir.

Judge McDuffie: You can testify if you wish, but you don't have to. You can say whatever you like, with reference to the questions that might be propounded to you, but you don't have to testify.

A. Judge, your Honor. I would like to ask you to help us get in the army as quick as we can get an examination.

Judge McDuffie: You boys probably are going to be taken into the army. The reason you have not is because you were held as a witness in this case. You will be processed into the army and your case will be terminated and after you serve six months after the war is technically ended, you will be out. I think that is the way it is. Is that all you want to say? You don't want to answer any questions about what you swore to, or what Adams did, or anybody else?

A. No, sir.

Mr. McConnell: I want to ask him a question here that won't incriminate him. Sammy you, of course, know your brother Sammy B. and your brother John Derry, do you not?

A. Yes, sir.

[fol. 91] Q. I want you to state, please where your brother, Sammy B. and John Derry Towns, lived from the first of January, 1942 up to the tenth of February, 1945? Where did they live during that period of time?

A. I just don't remember. I know they been living home part of the time. I didn't keep up with them all the time, we be working and we don't keep up with each other. I know they were at home.

Q. They were living at home?

A. Yes, sir.

Q. Where is home, your mother's home?

A. Pleasant Hill, Alabama, yes, sir.

Judge McDuffie: Didn't you live here at Selma a while and go to school?

A. Yes, I don't know what year it was. I forget.

Mr. McConnell: I was asking about the period laid in the indictment as their place of residence.

The witness was thereupon excused.

SAMMY B. TOWNS, witness on behalf of the Government testified on direct examination as follows:

Judge McDuffie: These boys are not charged with any conspiracy?

Mr. McConnell: They are alleged to have been co-conspirators, but are not named as defendants.

Judge McDuffie: You don't have to testify to anything that might bring upon yourself the charge of violating the law. Your case is over with, and you are not here to be tried again for failing to register. Your mother has been indicted and she has plead guilty. So has your father, for trying to keep you out of the army. You are not being tried now, but if your testimony would indicate that you helped your mother and father in trying to avoid the service, then, you could be indicted. Nobody knows that will be done, of course, but you don't have to tell on yourself. You don't have to make any statement that [fol. 92] might hurt you in the future. Do you understand what I am talking about? You are here as a witness, and no witness has to testify to anything that might be harmful to him. If you care to testify, you may do so, but, if you don't want to testify to anything that happened, you need not do so. We are not interested in anybody today but Adams, C. J. Adams. If you understand what I am talking about, you make your decision whether you wish to testify today or not.

A. I don't see any need. We are already convicted. We don't know no more than what they told us. I don't see no need in testifying, we already are convicted.

Q. You are not being tried today.

A. I don't know anything but what they told me. What I saw in the bible, I sure don't know myself. They had to tell me.

Mr. McConnell: Let me ask him the question. Maybe

that will clarify it. I want to ask you whether or not you appeared personally before a notary public and signed an affidavit that you were born June 9th, 1930, in connection with getting a birth certificate during the month of March, 1944? That is the question I want to ask him.

Judge McDuffie: Sam, you don't have to answer that question if you don't care to. That is what I have been trying to explain to you. You have a right to say "No, that might get me into trouble." That act could be construed as a part of a general agreement or understanding between you, your mother, your father and the notary public Adams, all of you working to the common end of trying to keep you boys out of the army, if you don't want to say you made that affidavit you don't have to say so. What are your wishes?

A. We were not trying to stay out of the army.

Judge McDuffie: The question is whether you [fol. 93] want to testify whether you made that affidavit before Adams. You don't have to say you did sign the papers. You can stand on your constitutional rights and say "I don't want to testify about anything connected with this whole thing."

A. Yes, sir. I signed it.

Judge McDuffie: Well, he says he signed it. I don't know whether he understands what I have been trying to explain to him or not. I hope he understands. Do you understand what I have been saying that signing the affidavit, going anywhere, doing anything in furthering the move that your mother started by getting these certificates, making statements, making affidavits before the notary public, and getting delayed birth certificates, etc., if you, with the intent to keep out of the service, did that, you don't have to testify in this case at all. If, of course, you were obeying the order of your mother and had no intention of trying to keep out, I don't think you could be convicted on a charge of conspiracy.

A. I didn't understand what you were talking about at first.

Judge McDuffie: Do you understand now?

A. Yes, sir. I didn't sign nothing like that.

Judge McDuffie: You just signed your birth certificate and it was not done with any intention to keep from going in the service?

A. No, sir.

That is my signature to birth certificate marked Plaintiff Exhibit 5. I signed it before Adams. I lived at the same place January 1, 1942 and up until February 10, 1945. That was at Pleasant Hill, Alabama. Samuel C. Towns lived at the same place and also John Derry Towns. Samuel C. Towns and John Derry Towns also signed an affidavit for their birth date just like I signed for mine at the same time, I signed mine. I was there with them. I saw them sign them before Adams. I saw [fol. 94] them all sign the affidavits. My mother and father were also there. My mother had a bible with her.

On cross-examination the witness testified as follows:

My mother came with me that day. All of us signed that day I think. My mother came in after we had left out. She was not in the room when I signed. She came in after we signed it. We met her coming in the door as we were going out.

Harry Davis, recalled, testified as follows: I did in company with Chief H. L. Dickerson, Chief of Police of Selma, Alabama, talk with the defendant, C. J. Adams, during the month of June, 1945, with reference to these delayed birth certificates of Samuel C. Towns, Sammy B. Towns and John Derry Towns and the supporting documents relating to the bible and with reference to the bible in this case. He told me what he did freely and voluntarily. I talked with him in the office of Chief Dickerson in the City of Selma. He told me he had notarized the birth certificates. He said he had a form there which had been filled out down to a certain point and that up until that time he had not seen the boys and at the time they walked in for the notarization he then realized he said, you could look at them and tell they were over eighteen and he furthermore stated that he had notarized the birth certificates which you mentioned. He said that he had proceeded with his activities after he had recognized the fact that they were over the age of eighteen.

The above is a substance of what he told me.

On cross-examination he testified. He told me at the time we were in Chief Dickerson's office they were over eighteen. He told me that at the time the boys walked in he knew at that minute and realized that they were over eighteen. I am positive of that. Although he knew it, he went ahead with the proceedings. I have a written [fol. 95] statement on that. I don't see that in the statement, but know that he told me that. That was his statement.

Judge McDuffie: Did he take that particular part of the statement? He may not have taken all of his statement.

Mr. Gayle: Did you write it all down?

A. I wrote a statement.

Q. I would like to see it, please.

Judge McDuffie: How long is it?

Mr. McConnell: I have no objection to his reading the statement. I asked him to look at it and refresh his memory.

A. This was made June 16, 1945. I, C. J. Adams, hereby made the following statement to Harry Davis, who I know to be a special agent of the Federal Bureau of Investigation, voluntarily and of my own free will and accord, no threats or promises having been used, and knowing the same may be used in court; the following documents have been exhibited before me; delayed birth certificate Sammy B. Towns; delayed birth certificate Samuel C. Towns, delayed birth certificate John Towns; bible record, family bible of Carrie Lee Towns, listing birth of Sammy B. Towns; bible record, family bible of Carrie Lee Towns, listing birth of Samuel C. Towns; bible record, family bible of Carrie Lee Towns, listing birth of John Towns. All of the photostatic copies of the documents listed above are notarized by me and bear my signature. They were exhibited to me in the presence of H. L. Dickerson, Chief of Police, Selma, Alabama. I have read the above statement and the same has been read to me. I signed the same in the presence of the witnesses listed below. C. J. Adams. H. L. Dickerson, Chief of Police. Selma, Alabama. 6/16/45. Harry M. Davis, special agent, Federal Bureau of Investigation. Birmingham, Alabama."

I took the statement and that was in the conversation and I had it signed by him in my presence. The early [fol. 96] part of this statement was not in his exact wording. I will do the best I can to give you the exact wording. Adams was explaining the form and he said that he had at this particular time, going down the form, not seen the boys, and at a certain time the boys came into the office, and that was the first time he had seen them, and he said, "you can look at them and tell they are over eighteen."

Q. Is it not a fact that he made that statement after he had gone through the trial and had seen these boys on trial and had heard all this evidence.

A. They had gone through a trial, yes.

Q. He had seen these men in this court and he had heard all the testimony, and then he said that you could look at them and tell they were over eighteen, but he didn't say that on that day when he took that acknowledgment that you could look at them and tell they were over eighteen, did he make that statement to you that he knew then, when he took that acknowledgment that they looked like they were over eighteen, or did he make that statement afterwards that he now realized they looked like they were over eighteen?

Judge McDuffie: You have asked him several questions without giving him an opportunity to answer. He said he knew they were eighteen at that time they walked in the office.

Q. What were his exact words? Did he say he knew they were eighteen at that time?

A. Well, he was talking about the time they filled in the form.

Q. I am asking you what he said. I do not want your conclusion. I am not trying to make you out as having done anything wrong.

Judge McDuffie: What Mr. Gayle is trying to find out is if his statement was that when they signed the papers [fol. 97] before him he could look at them and tell or anybody could tell—whatever he said along that line—they were over eighteen, was that statement by him made at the time he filled out the papers or after the time the

papers were filled out, did he say, when he was fixing the papers and at that time when they came in to sign these papers, anybody could see they were over eighteen, when was it he made that statement?

A. At the time they came in to sign the papers, he said you could look at them and tell they were over eighteen.

Q. He made that statement himself? He used those words? You heard him use those words or did you come to the conclusion because he was talking about it that he used those words?

A. He came down the line and said they didn't come to my office until this point, that was the first time I had seen them, and you could look at them and tell they were over eighteen.

Q. Those are his exact words?

A. Yes, sir.

The witness was thereupon excused.

Chief H. L. Dickerson, witness on behalf of the government testified on direct examination as follows: I am Chief of Police for the City of Selma. I recall the occasion when Mr. Harry Davis of the F. B. I. talked with Charlie Adams in my presence during the month of June, 1945. I heard the entire conversation and think I witnessed the statement that Adams made. I never saw the boys and didn't know who they were referring to, but Adams told Davis in my presence that up until the time the boys were brought in, or who ever Mr. Davis was talking to him about, he had never seen them before in his life, until they were brought in for this affidavit to be made. Davis questioned him along the line of the appearance of the boys as to how old he might have thought they [fol. 98] were, and Adams recalled he thought they looked like they were over eighteen years in his opinion.

On cross-examination the witness testified as follows: I saw Mr. Davis take the statement. Adams did not say that he ever discovered they were over eighteen years of age.

On re-direct examination the witness testified: He did say that in his opinion they were over 18 years of age. He said he arrived at that opinion the morning the boys arrived whenever that morning was.

On re-cross examination the witness testified: Mr. Davis questioned him in regards to their appearance, as to how old he might have thought they were, how old they looked to be, and he said in his opinion he would have thought they were over eighteen. He didn't say when he formed that opinion as the only time referred to was the morning he made the affidavits.

The witness was thereupon excused.

CHARLES A. APPEL, JR., witness on behalf of the government testified on direct examination as follows: My name is Charles A. Appel. I am special agent for the F. B. I. I work in the laboratory in the Bureau in Washington, D. C. I have worked there ever since it was started in 1922. I said I started to work in 1922, but mean I started in 1932. It was formerly organized in 1932, and I have been engaged in the examination of handwriting, examination of typewriting, examination of documents of any kind concerning alterations or changes or whether a document is genuine. Prior to the time I started work with the F. B. I. laboratory in 1932 I attended lectures of J. Tordyce Wood of Chicago, Wilbur S. Osborne of New York and Dr. Wilmer Souder of the National Bureau of Standards, Washington, D. C. They were all experts in [fol. 99] that line of work. I have examined a large number of documents, printed, written, typewritten, and that sort of thing during my course of work. I examined a certain bible that was sent to me by Mr. Harry Davis from Montgomery. The bible marked Exhibit 15 is the bible I examined. I examined it particularly with reference to the entries recording births of children to ascertain whether it was genuine. I made the examination as to the age of that bible and whether or not it looked its age. I have enlarged photographs of the birth dates in the bible. This is a photographic enlargement of a page of the bible with entries as to dates of births of various persons. These dates run back on this page to 1910, and I examined the bible to ascertain if the bible was in existence at that time, and I found on the fly leaf of the bible some printed data which showed me that the bible could not possibly have been in existence at the time of these dates. I have a picture of that printed page that I just referred to. This is a photographic enlargement

of the back of the second page, I believe, in which is set out the license to print the bible, which was issued the 13th day of February, 1939, at Edinburgh, the date of this license being March 10th, 1939. This is in small print which many people cannot read without enlargement. It is a King James version of the bible. It has to be authorized before it is published. The date of publication would have to be subsequent to the date of the authorization for publication. I matched the edges of the page bearing the names of the children and the birth dates and the tear shown here, showing the exact match of the torn edges just the way it was torn out, part of the page is still attached to it. There was another page, which is the reverse of that page, the same tear looks a little different on the other side, with the dates of their births.

On cross-examination the witness testified as follows: I am an expert in this line of work. I did not make the pictures to ascertain the correct reading; I [fol. 100] simply made them to bring here to explain what I found. It is not the date of publication of the bible but is a means of ascertaining the approximate date of publication. I know that as an individual. I don't know the date of publication. It does not have the exact date of publication. It shows that it could not have been published before this date. They have to have a license in England and when I see the license date I know that it has to be published after that date because in England they require a license. This particular book, the King James version has to be licensed in the United States. It is not published in the United States without a license from England. Many books carry dates of publication. It depends on who publishes them. It depends on whether they choose to put it in or not. That is not the date of publication.

On re-direct examination the witness testified: I could not certify, looking at these entries and that page, that these entries were made many years ago.

On re-cross examination the witness testified as follows: I am an expert.

Mr. McConnell: That is the government's case.

Mr. McConnell: If the court please, the gentlemen wants to further cross examine Mr. Appel.

Judge McDuffie: He was just invited to lunch. I thought they were through with him.

Q. I will ask you to look at this bible here and tell me what version that is?

A. It is a King James version.

Q. Will you show me the date of publication in that bible, please sir?

A. I don't see any date of publication.

Q. I believe you stated that the King James version had to have a license or date of publication?

A. I didn't say any such thing.

Q. I said I thought I understood you to say that?

A. I did not.

[fol. 101] Q. That has no date of publication and that bible is a King James version?

A. Yes, sir.

Q. Why did that not have to carry a license or a date of publication?

A. I don't know any particular reason why it should have to.

Q. I thought you said in this other one you could tell it was published after that license date. Could you tell at any time when this was published just by looking at it?

A. No, because the statement does not appear in that book. It might be possible to date it by other means.

Q. Yes, but I mean if you looked at it. If your Honor, please, I would like to offer this in evidence, but I hate to offer this and not be able to get it back. That is the position we are in here. Do you see any date of publication in that bible?

A. I have not read this myself.

Q. I wonder if you could locate the date for me?

A. On the fly leaf, the context says comformable to that of the edition of 1611, commonly known as the authorized or King James version.

Q. You don't know just by looking at that when it was published?

A. No, I don't see any date of publication in it.

Q. Thank you, sir. Would you look at this and tell me if you could locate in that—that is rather an old one—the date of publication?

A. This has copyrights dates in it?

Q. That is not a date of publication, is it, sir?

A. That is the date of the copyright.

Q. By copyrighted it means simply when they made application to have it copyrighted, but does not give the date of publication?

A. No, but it determines the publication was after that date.

Q. Could you name the date of publication of that book right now without study?

[fol. 102] A. No, it was after the date of the copyright.

Q. But you could not tell what date it was published after that, could you?

A. That is right.

Q. Could you give me the definite date of the publication of this one just by looking at that book, not by what you later discovered, could you give me the date of its publication.

A. I cannot tell the date any more than to say it was not before this certificate.

Q. That is all you could say?

A. That is right.

Q. You could not say when it was published?

Judge McDuffie: I don't think anybody could say that it was published on any particular date.

Mr. Gayle: The question has been raised here. Mr. McConnell has said that they intended to show that the date of publication was in this book, the date it was published, and that the certificate said that no date of publication was shown. I am trying to prove and let the jury see there is no date of publication in any of those books.

Q. (Mr. Gayle continuing) Look at that, please, sir.

A. I believe this is the same edition as the previous one. I looked at, the same printing and everything, and there is no date of publication in it.

Q. You could not tell, of course, when it was published?

A. No, sir.

Q. This has a date, I believe, has it not? Is that the date it is published there?

A. This was published by a bible house in New York in 1944.

Q. That shows the date, does it not?
A. Yes.
Q. Thank you.

[fol. 103] On re-re-direct examination the witness testified as follows:

Q. You have been handed by Mr. Gayle four bibles, while he was examining you a few moments ago, and you testified concerning each one of them. He asked you in each case to look at it and see whether or not it had a date of publication, and you did so. Now, in each instance here, in each of those bibles, did you look for the date of publication or the date of copyright or the date of authorization on the title page or the reverse of that page?
A. The first two or three pages, yes, sir?
Q. Were any of those four bibles which he handed you printed in London or Great Britain?
A. No, they were not.
Q. Did any of those four bibles carry the language here printed by authority?
A. No, they did not.
Q. Now, I am handing you here the government's exhibit, the bible which is here involved in this case, and I will ask you where in that bible is that authorization that you referred to, in what portion of the bible is it?
A. It is on the title page and the reverse.
Q. Exactly where you have looked in each of the other bibles for the date of publication, authorization or copyright?
A. Yes, sir.

Judge McDuffie: Are you through with this gentlemen, both sides?
Mr. McConnell: Yes, sir.
Mr. Gayle: Yes, sir.

The witness was thereupon excused.

C. J. Adams, witness on behalf of defendant testified on direct examination as follows: My name is Charles J. Adams. I am also known as C. J. Adams. I know Carrie [fol. 104] Lee Towns when I see her. I recall the occasion when she came up to my office regarding obtaining birth certificates. She did not tell me what she wanted these certificates for. I had no knowledge of any kind what

she wanted these birth certificates for. I looked at the bible which was in possession of Carrie Lee Towns. I am not an expert on the age of a bible. I do know a brand new bible from an old one. I am not an expert to say what is an old and what is a new bible. It is not the bible I saw. The bible I saw when I was on the stand in March, the only thing that enabled me to identify the bible was that I saw the names of Sammy B. and Samuel C. Towns on one line and one birth date for the two, and the reason I remember that was when I was taking the acknowledgment, the question arose by me, I said "You say there are three boys and I only see two" and she said "There are two on the same line, they are twins, Sammy B. and Samuel C." That is the only thing in the world I have to identify the bible. I don't see that. That is the only thing in the world that enabled me to say it was the bible and I don't see that now.

Q. Look at it carefully and see can you find it?

This looks like it. The bible that I saw at the time I took the acknowledgment had those names written on one sheet and the sheet was not torn out of the bible. When they came before me the sheet was not torn out of the bible and was not torn out when I was on this stand in March testifying for the government. That is the only difference I see in the bible. The sheet was in the bible and it has since been torn out. The mother came first and brought the bible with her and I took her acknowledgment. I also certified as to the bible and stated that date of publication was not shown. The real date of publication is printed on the form and, of course, when the date was asked, there was a blank place for me to write date of publication. I wrote date of publication not shown, because I did not see it. I did not see any date of publication. The boys later came in and I [fol. 105] took their acknowledgments. The reason I want to see the three Towns boys's certificates, is the only proof I have that they did come in is that I took their acknowledgment. If you will note on the birth certificate you will find that the acknowledgment of the mother was taken a day or two ahead of the date of the acknowledgment of the boys. After I acknowledged the certificate for her I handed them back to her and told her to tell the boys to come in and I would take

their acknowledgments. I averaged between five and six hundred birth certificates for the year 1944, but this year I would not average a hundred or two. Those are the certificates that they came before me and I took their acknowledgments. I recall the time I had the conversation with the Chief of Police and Mr. Davis. I did not tell them that the morning they signed the certificates that I knew they were over 18 years of age. When the F. B. I. agent asked me about my opinion of the boys, I told him that I could not even remember seeing the boys until I saw them sitting down there at the date of the trial in March. I did not tell him at that time, on the day I took that acknowledgment, that I thought they were over eighteen. When he asked me my opinion I told him my opinion was they would be over fifteen. I did not use the word eighteen. I told him my opinion was that they would be over fifteen. I formed that opinion after I had seen them up here at that trial. I did not know them on the stand today until the second one came in. I saw them before when I testified for the government. That was when I formed my opinion about their ages. I do not recall ever seeing Carrie Lee Towns any time before up until the time she brought the bible in. I am 66 years old and am a veteran of World War I. I have served in the army three times. I have three honorable discharges from the United States Army. I served in the Philippines. I was a volunteer in World War I. I have been helping the colored people since World War II with their selective service papers. I started helping the colored veterans in 1920. I have [fol. 106] helped about 300 since World War II. I have never made any charges. I was convicted once in this Court and served time. I have a record of service with the United States Government.

On cross-examination the witness testified: I will have to ask you to come closer or talk louder. I am not able to hear you. They call me C. J. I said I filled out about 300 papers, helping world war veterans, but I have filled out more than 1,000 papers for selective service files. I have never made any charges for those. I know that it is against the law to charge. I filled out about 400 or 500 acknowledgments in the year 1944. I filled out less in 1943 than in 1944. I would say probably 200

less. In 1942 the acknowledgments were almost negligible. I think about 100 in 1945 so far; 1944 was the biggest year for acknowledgments. I would say that was caused by a lot of people getting birth certificates for defense work and for entrance in schools, by moving from place to place where birth certificates were required, and by a lot of people going to the north who could not get defense jobs without birth certificates. A large number of those were negro women who never worked in a defense factory before that were able to get employment in defense factories, if they could secure birth certificates.

Q. Is it not so that the birth certificate business was what caused you to have so many acknowledgments in 1944 than any other time?

A. That is right.

The whole 500 or 600 acknowledgments that I referred to were in reference to birth certificates in 1944, and when I said 200 less the year before I still was referring to birth certificates and when I say that it had fallen off in 1945 I still was referring to birth certificates. I did not furnish the forms for all of those birth certificates. In filling out the birth certificates in 1944 many of them were carried to Montgomery by [fol. 107] the people themselves, and some were carried by me, and some were sent by me. I am unable to say who sent off the three Towns birth certificates. I used the typewritten forms for the supporting documents for the Towns certificates. I don't know who made up those forms. I made quite a few and bought some for five cents apiece from Mr. Lapsley and those were typewritten. I made up some of them. I made them up on the typewriter. I did not keep a supply of them on hand at all times. I made them up as they were needed. I did not have a supply of them on hand. When a person wants a birth certificate, he writes to Montgomery and probably sends fifty cents for his birth certificate. Montgomery makes the search and if it is there, it is sent to that person. If it is not there, Montgomery sends that person an application blank, Form VS 4, and about half a dozen different documentary evidences that may be used. I am speaking about the yellow form marked Plaintiff Exhibit No. 9. That is what Montgomery sends them. I call it form VS 4. It shows on the back what documentary

evidence is acceptable. Every time Montgomery sends a person VS 4 forms, it sends more documentary forms than that person needs. Montgomery sends the forms for documents. I will show you one. You see this is printed. The bible record on one side, the baptismal record on the other side, and there are about six of them, a long sheet containing about six. I made up quite a few of them on the typewriter. The reason that I make them up is that the customers more than half the time mess them up by trying to get them made out, then it was up to me to type a form. That happened about fifty percent of the time, and that would be about twenty-five a month in 1944 that I have typed. Whenever I had to type one, I would more or less type three. I spell bible—b i b l e—. I am not able to say positively that I typed it because I had a girl teaching her shorthand and touch typewriting at that time. She did the typing. I did very little typing. I was teaching her [fol. 108] touch system. I didn't teach her shorthand. I was teaching her typing by the touch system. I am not able to say that was the bible, because of the fact—Let me have the bible once more—now, when I took the acknowledgments for the three boys, the sheet was in the bible and the names of Sammy B. and Samuel C. Towns were written near the bottom of the page.

Q. Will you just answer the question, please? Is that or is it not the bible which you examined?

I am not positive that it is the bible. I know it was an old looking bible. You see I cannot remember enough about the bible to say whether or not it was larger or smaller than this. The writing is the only thing to enable me to identify it. I still hold that when I took the acknowledgment, the names of the twins were written near the bottom of the page of the sheet that I saw. At the trial of the Towns I did not positively identify the bible as being the same. I recall the testimony at the trial of the three Towns boys. My name is C. J. Adams. I am a notary public of Dallas County, Alabama. I recall acknowledging the signatures as notary public on some delayed birth certificates for the three Towns boys. Samuel C., Sammy B. and John D. Towns, according to my record. There was nothing at the time to make me remember it. It was in the month of March, 1944.

I looked at the three copies of delayed birth certificates, marked Exhibit A, B, and C and that is my signature, and they are the ones that I notarized." I remember giving the information that you have just read, I am familiar with the manner in which delayed birth certificates are filed, and the two supporting affidavits. You handed me the holy bible and asked me to look at it, and I did look at it. I examined the bible and told the Court that I was trying to ascertain whether or not that was the bible examined by me. I remember full well when I looked and scanned over the bible and saw that the names of Sammy B. and Samuel C. were written on one line and one birth date, that was the only evidence [fol. 109] in the world I had to say this was the bible, the evidence I am inclined to feel would show that. I say I have every reason to believe that this is the bible. It reads I have every reason to believe this is the bible in the case of Sammy B. and Samuel C. Towns, born June 9th, 1930. After I looked at the names I said I have every reason to believe that this is the bible. That is all I remember saying. I don't remember saying it. If I said it it was true to the best of my knowledge and belief. I still don't know whether that is the bible or not.

Q. What is the date of publication of the bible which you hold in your hand, which is a government exhibit?

A. Of all the bibles which I have handled, I look on this page here.

Q. What page is that?

A. The first page, the first or first few pages.

Q. Tell us what you found on the pages where you always look to see the date of publication?

A. I failed to find the date of publication.

Q. Just read that bible and tell us what you found on those pages?

Mr. Gayle: I object to the question on the ground that the book itself is the best evidence.

Judge McDuffie: Overrule your objection. Note an exception.

Q. Will you answer the question, please?

A. I will in just a second. Where is the form I handed you a moment ago?

Q. I was hoping to keep it. Here you are. Do you always keep that by the way on your person?

A. No, sir. I just happened to have it at this trial.

You see when I got the names of the boys from the [fol. 110] bible and it says right here "I certify that I have examined the family bible now in the possession of". I wrote Carrie Towns, "which was published by in the year of " I looked at this bible here, I wrote Collins' Clear-Type Press, Glasgow, Toronto Sydney and Auckland. I then looked for the year of publication on the first page and the reverse of this page. I cannot read what is on that page. That which is on the first page is "the holy bible containing the old and new testaments translated out of the original tongues and with the former translations diligently compared and revised by his Majesty's special command. Appointed to be read in churches. Authorized King James version. Printed by authority. London and New York. Collins' Clear-Type Press, Glasgow, Toronto, Sydney and Auckland." That is all there is on the first page. On the second page, or reverse side of what I have been reading I can read the word "license" and "T. M. Cooper, and I can read "Printed in Great Britain." I can see a small paragraph on that page, but I cannot read it. I have tried but can't read it. It is such small print, and I am unable to read it. I don't remember noticing that print on there at the time I made this certificate. I remember looking where I always look to find the date of publication of bibles. I looked carefully and diligently and when I failed to find the date I simply wrote date of publication not shown. I did not read that paragraph to see if the date was in that paragraph. The first time I talked with the Towns family about the Towns boys was the time Carrie came to me with the bible and asked me to get out the papers for birth certificates.

Q. I hand you here Government Exhibit No. 6 and ask you to read your acknowledgment there of the signature of Carrie Towns, insofar as the date is concerned, March 23, 1944? She was there at that time?

A. She was.

She was there at that time appeared before me. I am sure it was she. I didn't know it before, but I have

[fol. 111] known her since then. No one introduced her to me at that time. I based my certificate on her statement and her bible. I do not remember seeing her before that date. I would not have remembered her probably if it had not been for the fact that I said the two Towns boys' names were written on one line, and I said to her, you said there were three boys and I only see two, and she said yes, the two twins are written on one line. Then I looked at her and remembered her full well. Looking at Exhibit 4 and at my signature to the affidavit of Carrie Lee Towns she was before me on March 24, I took the acknowledgment of Samuel C. Towns on March 25th. He was before me on that date. Each of the other boys were before me on the 25th. I did not know who they were and no one introduced them to me. I could not say whether or not they were the three boys I saw here on trial or not. When it comes to a birth certificate, there is not one thing in the certificate that says that such person is known to me or made known to me. I took the acknowledgment. I simply say that the boys said that the statement they had made was true. I said nothing about my knowing them or knowing that the statement they made was true. Carrie Towns came to see me on the 23rd day of March, and she came back again on the 24th. The boys came to see on the 25th. When she first came to see me she did not just speak of John, she spoke of all three of them. She filled out the affidavits on John on the 23rd and came back on the 24th and filled out the affidavit for the twins. I do not know her reason for that. I think she made out two on the 23rd and one on the 25th, tho. I am unable to say why she did it that way. She was not doing this under my instruction. She sought me I didn't seek her. When she came to see me she took her seat by my side and said she wanted me to make out papers to get birth certificates for her children. I don't remember anything else she said because it was my say then. I asked her what were the names of the boys and she told me. There were three of them. Then I [fol. 112] began writing down their names on the application for birth certificate. I am not able to say whether she brought the applications with her or whether I had them. Sometimes I have them in my office and sometimes I don't. I believe that the reason two were made out one

day and one the other was because I was out of application blanks. I don't furnish anything until I make out the yellow form VS 4. It looks like to me I furnished one of the forms. I may have furnished both. After I filled them out and took her acknowledgment and put the seal on it, I handed them back to her and told her to have the boys come so that I could take their acknowledgments. I also told her about the supporting documents that had to be sent in. A whole lot of them don't know about that. The majority who come think I can do everything else that is necessary to do. After I make out the VS 4, I tell them about the documentary evidence that is necessary and, of course, ask them about which of those twelve listed on the back of the form they can furnish. I ask them what two of those can you most conveniently furnish. I feel sure that I did ask Carrie Towns that. I cannot remember what she said. She had the bible with her when she first came in. She said "Here is the bible." After that I took the acknowledgment of the boys from the bible, I mean by acknowledgment of the boys from the bible that it was the record that the bible showed about their names and ages, and etc. and was put on a documentary form. I mean to say that I signed the certificate that I examined the bible. An acknowledgment is a statement made by a person under oath. I made that statement under oath, that I examined the bible in so far as the names of the Towns children and birth dates, etc. I looked at the bible enough to see whether or not the date of publication was shown where it is usually shown. I do not remember Carrie coming before me in the month of February, 1944. She might have but I don't recall it if she did. That is my signature on that document. It was sworn to before me on this the 9th day of Feb-
[fol. 113] ruary, 1944, by Carrie Lee Towns. I don't remember her being here on that date, but according to this record, and this record is correct, it is my writing, then she was. The document I just read is a birth certificate and relates to the birth of Lenon Towns. I took the acknowledgment at that time but I didn't know her. Exhibit 14 handed me by you is a birth certificate relating to Isham Towns. It says that the father's name is Walter Towns and that the present post office address of the father is Berlin, Alabama.

Q. What else does it say?

A. It says the birth place is Dallas County, occupation of the father is farmer, number of children 11.

Q. Number of children 11?

A. Yes, sir.

Q. That is what it says?

A. Yes, sir. Now, you want to bear in mind I never saw that before until just now, until you brought it before me a moment ago I didn't handle it. The only way in the world for me to tell you I filled out those supporting documents, is for me to look at them. I have no recollection whatsoever of it. I don't recall this except from what the record says. That is because of the volume of business I handle. I have no recollection of what these boys looked like when they came in to sign those papers. I know Sammy B. came in and said his name was Sammy B. but what he looked like when he did I have no recollection.

Q. You were busy at the time he came in?

A. I was busy transacting business with him.

I was looking at him when he wrote his name and I took his acknowledgment. At that time I didn't advance the least thought about his age. I was getting him a delayed birth certificate and it is not my duty to comment on the age of a person. All I say is that he acknowledges that what he says is true. He didn't tell me his age and I didn't ask him. I cannot say I even looked at it. I filled out the papers a day or two before he came in. I don't [fol. 114] remember filling out his birth date as October 9, 1923. I filled the paper out from the records. When he came it was just a matter of my taking his acknowledgment. After he wrote his name, he signed the certificate that the information he gave over his signature was true to the best of his knowledge and belief. I was interested in knowing whether it was true, but I was not interested in finding out whether or not it was true. I will not say that I did not want to find out whether it was true or not but will say that I did not make any effort to find out whether it was true or not. As a Notary Public I didn't understand it was my duty to make investigations as to whether a statement was true or false. All I know is that he said that it was true and that is all I was concerned

about, and that is all that I was interested in. I was interested in the truth of what I said about the bible. I understand the purpose of the bible certificate and I had them use the Bible, because of the fact that the law has changed so that there must be documentary evidence of something written at least one year previously. The documentary evidence must be of something written at least one year previously. You might have to ask them why they used the bible. I say that I formed an opinion that these boys were over fifteen years old when the F. B. I. man asked my opinion in Mr. Dickerson's office, as to how old I thought they were, and I told him that in my opinion they looked to be more than fifteen years old. I did not say how much older they looked than that. I told him they looked to be over fifteen. I never remember seeing them at all until they were here in the court room. I saw them a whole lots longer here in the court room than when they were in my office and signed those affidavits, and furthermore, when I looked at them here, I looked at them with a thought as to their age, but when they came into my office, this was just a matter of taking an acknowledgment as to what they said was true, and I feel that the procedure that I used in executing the acknowledgments is the same used by thousands of notaries throughout the [fol. 115] country. I take every precaution whenever I get hold of a paper, where it reads that I say the person is known to me, if that person is not known to me, I put a little asterisk there and write made known to me. I took ordinary precaution in this case as any other notary public would have taken. I took it for granted that the statement they made was true. The statement I made was true. It was true, no matter how old these boys were, for they said that what they said was true, regardless of how old they were, they said their statement was true. I would not have made that same certificate if they had been old grey headed men that had come before me, because of his age, if he was old and grey headed, I would have known he was making a mistake, and I would not have made the certificate.

Q. Suppose they had been old grey headed men, would you have made that same certificate?

A. You have sworn me. Now, you are asking me an

opinion. An opinion is what I would have formed about an old person. These boys looked like they could be telling the truth. There was nothing suggested to my mind that they were a few years older. I am honest when I tell you, even though you are the prosecutor, that I cannot say that I looked at the date to compare the date of birth with the ages that they would be.

Judge McDuffie: I want to ask you a question. Did you know what the mother of these boys wanted to do with that certificate?

A. I did not, sir.

Judge McDuffie: She did not tell you that she wanted to keep them out of the services?

A. No, sir. One minute, Judge, if she had, it would have been a different picture, because the F. B. I. man came from Birmingham to my house sat down in my front room and advised me to notify him of anybody carrying on unamerican activities, he gave me his address and telephone number and told me if it were urgent to wire him [fol. 116] and if it were not to write him. I put that information down on my American Legion card, and put it down in shorthand, so that if the card would fall into the hands of the ordinary person they would not be able to decipher it. Nobody has ever come to me with a thought of my helping him to keep out of the service. I am in position to produce to you evidence that I encouraged men to enlist voluntarily in 1940.

Judge McDuffie: We know you have been a patriot. You have testified about that; anyhow, we will not go into that.

I charge 25¢ per impression of the seal for notarizing. I charged Carrie Towns for these certificates $1.00 each. That included everything. It did not include charges for certified copies. The certified copies come from Montgomery and she paid that in addition. She did not give me $1.50 for each one of these boys. She gave me $3.00 for all three of the boys. Whatever the Montgomery charge was, was in addition to my fee of $3.00. I do not know whether I sent for the certified copies or whether she did. I am still a notary public. I am in the notary public business; that covers helping to prepare papers for

World War I veterans and World War II veterans, and things like that. It also covers any other notary work that might come. For instance, somebody might come in for me to take an acknowledgment on a paper, and I charge 25 cents. That is not the only business I am in. I am not in the real estate business. I have been in the business of a Notary Public for about 20 years. I was a railway mail clerk until I retired about nine years ago.

The witness was thereupon excused.

Mr. Gayle: Your Honor, that is the defendant's case.
Judge McDuffie: Anything rebuttal?
Mr. McConnell: Yes, sir.

[fol. 117] DOROTHY PETTISS, being recalled, testified as follows: I still am deputy clerk. I have with me the file of this court in the case of United States vs. C. J. Adams and others, being case No. 9656. I have the original indictment in that case.

Q. Will you identify it, please, and let me have it?
A. Yes, sir.

Mr. McConnell: I wish to introduce the original indictment, if the court please, and ask that it be marked as an exhibit, and ask leave, after this trial, to substitute a copy in evidence, in order that the original may be retained in its original file in the office of the clerk of the court. May I ask you, can your file be so fixed as to show nothing except the indictment, so that we can use it without taking it out of your file?

A. Yes, sir.

Mr. McConnell: I offer this indictment as Exhibit No. 16.

Thereupon, said indictment was marked Plaintiff Exhibit No. 16.

I have the minutes of the court showing the plea and conviction of this defendant, C. J. Adams. I can identify it. It was on page 324 Selma, Minutes, Volume 3, judgment of the court in the case of the United States of America vs. C. J. Adams, Criminal No. 9656.

Mr. McConnell: If the court please I wish to introduce the minutes in evidence, with leave to substitute a true

copy thereafter, and ask permission also not to attempt to dismantle, the volume but just to mark it in the volume.

Thereupon, said minutes were marked Plaintiff Exhibit No. 17.

Mr. McConnell: That is all I wish to ask Miss Pettiss. [fol. 118] Mr. Gayle: No questions.

Mr. McConnell: Will the Court give me about two minutes. We need not take a recess, but I presume we might as well. I want to see if I have any further rebuttal.

Mr. McConnell: If the court please, we have no further rebuttal. There are three counts in the indictment that we would like to withdraw.

Judge McDuffie: That is on the question of what local board.

Mr. McConnell: Yes, sir. We put in Count One, for instance, alleging that the boys failed to register with Local Board One, and Count Two alleging that the same person failed to register with Local Board Two. I am now convinced from the evidence and from the regulations that Local Board Two is the only board which is properly involved, and, therefore, I would like to withdraw Counts 1, 3, and 5. That will leave, of course, Counts 2, 4, 6 and 7. Count 7 is the conspiracy count.

Judge McDuffie: All right, gentlemen, how long do you wish to argue this case? I don't like to limit you, if I can avoid it, but I hope you may be able to cover it within a brief period, doing fully justice to your side of the case. That applies to both of you.

In the course of Mr. McConnell's argument to the jury, he stated that the defendant had equivocated.

Mr. Gayle: May it please your Honor, I would like to object. Mr. McConnell has charged the defendant with equivocation. I believe you used that word. This defendant is not charged in the indictment with equivocation. He was charged in this indictment with falsely and intentionally doing so and so. Mr. McConnell is arguing to the jury that he does not say that the man is not telling the truth in his certificate, but that he has not told all of the truth.

Judge McDuffie: Sometimes a half truth is worse than a lie. That is for the jury to determine. I think it is

proper argument. The jury has heard the testimony and will determine whether it is falsely done.

[fol. 119] Mr. Gayle: I except to your Honor's ruling.

Charge to Jury

Judge McDuffie: Gentlemen of the jury, the court will endeavor as briefly as it can to assist you in arriving at a just verdict in this case. That is all we are here for, including counsel for the defendant and counsel for the government and the court. There is no interest here so far as any official is concerned, of personal interest for or against anybody. Certainly, you have no right to permit any interest that you may have to enter into your deliberations. Indeed, you have no right to put yourselves in the unfortunate place of the defendant. If the rule were otherwise, most of us having some of the milk of human kindness, as most of us do, thank God, the guilty would never be punished. What I am trying to say is you must divorce yourselves, gentlemen, from everything else except the evidence as it came from the witness stand.

This is a colored man. He is entitled to just as much consideration on the trial of the case against him as if his skin were as white as yours. We make no difference between the legal rights of one race and the legal rights of another, and you would pervert your high place, and I would mine, if such a thing were to occur in our dealing with a fellow citizen. I am trying to impress you with the necessity of your not letting any sort of feeling enter into your minds when you go to consider and make up your verdict on this case, after considering it carefully.

These attorneys have most ably represented their respective sides. Attorneys sometimes in their enthusiasm unwittingly say things, make arguments,—it is not with a view of taking advantage of anyone—it is simply an enthusiastic expression of their view point, in hope they might be able to point out to you these views of the testimony and the case as a whole. You, gentlemen, as soon as I get through are going to occupy a higher place than anybody here, even higher than the court itself, for you become the judge and the jury, with the exception of the application of the law. You must apply the law [fol. 120] as the judge gives it to you. If the court is

wrong in its conception of the law, there is a remedy always, for there is a higher court to correct the errors that this court might make. None of us are free from error. We are all human. The errors committed by this court would be errors of bad judgment in the mind of some other judge in a higher court. They would not be errors intentionally committed for one side or the other, because I have no interest in this case other than to help dispose of it and to see that justice is done.

Something was said about the punishment. Sometimes I regret that in this court the juries have nothing to do with the punishment. They do in the state courts. All you are concerned with is the guilt or innocence of one hailed before you. That responsibility of punishment falls upon the shoulders of the court, and it is quite a responsibility. Sometimes the courts would like to be relieved of it. Under our system in the Federal Courts, the judgment of the man on the bench determines entirely what punishment will be meted out, so you are concerned here with guilt or innocence.

Let me say now that an indictment is not evidence. It grows out of an ex parte proceeding. Of course, the grand juries do not try cases. If they have reasonable cause to believe that a crime has been committed, especially so in the cases of felonies, it becomes their duty to return an indictment. The case is tried before a petit jury, which, under our form of government, determines whether or not the charges in that indictment are true, and you even go further and you must believe they are true beyond a reasonable doubt. You cannot convict on suspicion. You must arrive at a conclusion from facts evidenced from the witness stand.

The charge here is in three counts of aiding and abetting. In another count, it is a conspiracy to do an unlawful act. The government has withdrawn Counts 1, 3 and 5, having to do with reporting to another board. This [fol. 121] indictment charges that Walter Towns, his wife, Carrie Lee Towns, together with this defendant and the Towns boys formed a conspiracy in one instance, and in the other instance that Walter, Carrie Lee and this man aided the Towns boys in doing an unlawful thing and that thing was in failure to live up to the law in observance of the selective service act, passed by the Congress of the

United States. In this case, you are not trying Walter Towns or Carrie Lee Towns nor the boys. Walter Towns and Carrie Lee Towns have entered their pleas of guilty to this indictment and their case is disposed of. You are not to consider them at all, except in this, a man cannot conspire with himself. There must be two or more minds—he could aid and abet in the commission of an agreement or a crime without conspiring with anybody. That brings me to the definition of conspiracy. A conspiracy, as this court understands it—and that is the charge here—is an agreement, not one made and signed by the parties, because conspirators don't hail their agreements from the housetops, nor do they sit around the table and call in the neighbors to witness the conspiracy, to do an unlawful thing, but it is an agreement, a tacit understanding, a knowledge on the part of each. You don't have to get it all at one time. I mean they need not gain the knowledge all at one time. I may not enter into the conspiracy while it is in the making, as it were, and be just as guilty as the man who started the whole thought. I may not at first have had the agreement, but if I join in, knowing what the scheme is, if I knew what was going on, and I would do anything in the furtherance of that scheme, then I am as guilty as the rest of them, and if either of the other conspirators, while the conspiracy is in the making, does any act, every other conspirator with him is chargeable as he is. Men have been convicted of conspiracy when the actual crime occurred one hundred miles from where they were at the moment of the crime's commission. Likewise men have been convicted for aiding and abetting when many miles away from the scene of the crime. Conspiracy, [fol. 122] therefore, is an agreement or understanding between two or more people to do an unlawful act or to do a lawful act in an unlawful way. That is what I understand to be a very fair definition of a conspiracy.

Of course, you must believe there was an unlawful scheme, and you must believe beyond a reasonable doubt that those who took part knew it was an unlawful scheme. A man cannot be guilty unless he knew it was wrong. A man may do wrong, but, unless it is in his heart to do wrong, unless it had been in his heart and he knows what he is doing to effect a purpose agreed upon tacitly

or otherwise, that man would not be guilty. Now, the question here is did this defendant—and practically the only question in this case is did this defendant help to do something, knowing that something was wrong, do the facts and circumstances show or point to him as one who was aiding to put over the thought that those boys would not go into the service. As a matter of fact, they didn't go, and the undisputed testimony here is they were subject to the draft law. That may be true and their parents may be guilty, but you must go further and believe that this man knew those certificates were wanted, knew the purpose for which those certificates were wanted, that he knew something about why they were asking for them, that he became a party to it and aided them in violating the law. Now, did that happen? You must be convinced beyond a reasonable doubt that it did happen before you can convict him under those counts which set out that he aided and abetted in having so and so fail to report on such a date. Is there any evidence here to connect him with any aiding and abetting. The same applies to the conspiracy. Conspiracy is not based entirely on just one day. A conspiracy may be formed and perpertrated within three years after it is begun. There is no evidence here that there is any three years involved, so these dates set up were the dates on which the boys failed to report, [fol. 123] and so far as conspiracy is concerned, you must not believe the conspiracy was formed on that particular date they unlawfully failed to report for duty. That is all that is necessary about that date. When the conspiracy was formed is entirely another proposition and what was done on that date may be an overt act, one of which must be proven, not all. The rule is that one overt act must be proved before a man can be convicted for conspiracy, and that is a very safe and sane principle, for you could imagine a man has conspired with his neighbors and convict him on that imagination, there must be some one thing done, which of itself may not make a whole thing, but connected with something else, might bring to your mind a conviction that there was some ulterior motive formed. Now, gentlemen, every overt act need not be an act—for that matter, evidence in a conspiracy case may be gathered together as though

it were a dragnet, it can consist of most anything—I don't think that you could say the moon is made of green cheese and consider that—I am talking about the actions of people, the words of people, the deeds of people sometimes speak louder than words. That is what you consider in making up your minds in this case as to conspiracy.

Now, gentlemen, there are certain rules of evidence that you should observe, that is, in weighing evidence, I should have said. The question of interest, the question of bias, the question of a swift witness, one eager to get something over, the question of a slow witness, from whom it is difficult to get testimony. You use your common knowledge of your fellow man and observe witnesses on the stand, their demeanor, how they testified. A man may be an interested witness and yet tell the truth, but the rule is if a witness is interested, and I charge you that the defendant in this case is interested in the outcome of this trial, because if you say he is not guilty he goes free, and if you say he is guilty, it is up to the court to mete such punishment as it sees fit. Therefore, he is an interested witness. That does not mean he has [fol. 124] not told the truth. The idea is that a man interested may deviate from the path of truth a little more quickly than the fellow who is not interested. That is the theory. It does not say he does deviate from the path of truth. A man may show an eager interest to get something over to you. The rule is you consider those things. You consider the interest in connection with his testimony, and when you apply the measuring sticks or yard sticks or when you use the scales in which to weight what one has said—the evidence in the case—you may consider those very things I have been talking about, interest, bias, prejudice, etc. Those rules apply to every witness who might take the stand. There were two government witnesses. One was on the government payroll. What ever you do could not make them financially interested. I cannot imagine any interest they might have other than doing their job well.

Now probably I have gone out of my way to say those things. Some men in their enthusiasm to do their jobs well may become over zealous. Have you seen any signs of that? They may be very zealous and yet plumb the

line of truth, but the rule is, or I have made it a rule, that you may consider the fact that there are men in their professional work doing this, that or the other, and whether or not they have become enthusiasts to such an extent as to cause them to get away from what the facts really are. I don't mean to say there is any evidence of it at all. I think that is a fair suggestion the court should make in a case of this kind. Yet, the government has witnesses in practically every case. We have to have F. B. I. agents. Some people dislike the thought. We have to maintain the law. We have secret service men in bureaus up there going out, here, there and everywhere, about the land, to find out what is going on, to make inquiries and to tell citizens that it is their duty if a man knows of a violation of the law to report it. We rely on those agencies set up for that purpose. [fol. 125] I am not trying to say what transpired here—that it does not mean anything—the defendant says the government agent told him he wanted him to report to him certain things—it showed that the government agent was simply doing his duty—having decided this was a good man to find out something from, whether this man's judgment was sound or not is not a very material matter. All that was testified to and permitted by the court, in order that fairness may be done to this defendant. A man may be a good man—many good men commit crime sometimes, but just because he commits a crime at one time does not mean he has committed all the other crimes which he is charged with committing. This man has been convicted of a felony, of a similar nature to this, growing out of making payments, getting something out of the government through the making of payments, to which he plead guilty, according to the records. You consider that, but you are not trying him on that, you consider that for two purposes—it goes to his credibility as a witness, because it is a crime involving moral turpitude. The rule is that a man who is shown to have committed a crime involving moral turpitude—you may consider the evidence to that effect in weighing his testimony and determining his credibility, the theory being that a man who commits a felonious crime will more quickly lie than one who has not. Another purpose it may show is what we call guilty knowledge—we call it in the law scienter, on the theory that the man who knows

how to do a thing, may do it more quickly. You simply weigh that when you consider all this testimony, to determine whether or not it could apply to this particular defendant or any defendant, in your case it is this particular defendant.

Now you are the sole arbiters of this testimony. That is your burden and your responsibility. I know how you feel. I know you want to render a true and just verdict, so that when you can go home, you may feel that you have done your duty under your oath of [fol. 126] a very high office. It is a serious case. It is a serious case to this defendant. It is a serious case to society, the observance of law and order, and I know you will give it proper consideration from every angle. Now, gentlemen, the burden is on the government, it never leaves and never shifts from the government, to convince you from all the evidence and circumstances in this case, first, that there was a conspiracy and understanding, secondly, that there was help given, which may have been a part of the conspiracy indeed or an overt act of the conspiracy the giving of help made possible, that there was an agreement of some kind between the parties named in that indictment to bring about the doing of an unlawful thing. Now, as has been suggested, you must believe beyond a reasonable doubt, and the burden is on the government that there was such a thing, such aiding and abetting. Now, that brings me to a definition of what is a reasonable doubt. There have been many definitions of reasonable doubt by many learned gentlemen. I simply try to follow some judge who, I think, is more learned than I am, in stating that a reasonable doubt may compare or indeed it may be the status of the mind of a reasonably cautious and prudent man, which would cause him to hesitate to act in matters of grave concern. Sometimes and often times, a juror cannot explain it. It may arise—you have to have something on which to base it—you are an honest officer of the court and you cannot reach up into thin air and get a reasonable doubt, any more than you can reach up into thin air and find evidence on which to base a verdict of guilty. It is your state of mind, after weighing all this testimony, and if that state of your mind is as I have endeavored to describe, a reasonable doubt exists, and, under the rules, it is your duty to give

this defendant the benefit of that reasonable doubt. You have nothing to do as I said with the punishment. If you believe from the evidence beyond a reasonable doubt that this defendant is guilty as charged in the indictment—you may write that verdict on the back of the indictment, [fol. 127] one of you signing it as foreman,—the form of your verdict will be we, the jury, find the defendant guilty as charged in the indictment. If you find the defendant guilty under Count Two, you write the same, we, the jury find the defendant guilty, under Count Two of the indictment. If you find him guilty under Count Four, you write, we, the jury find the defendant guilty under Count Four of the indictment. If you find him guilty under Count Seven, you write, we, the jury find the defendant guilty under Count Seven of the indictment. You need not specify the counts, unless you care to, but the court will take it if you designate one or more counts that your verdict was based on those particular counts. Or you may say, we, the jury, find the defendant guilty as charged in the indictment. That covers them all. If you are convinced beyond a reasonable doubt that the defendant is guilty, the form of your verdict will be as I have given it to you. If you are not convinced beyond a reasonable doubt that the defendant is guilty, then, the form of your verdict will be we, the jury, find the defendant not guilty, one of you gentlemen signing it as foreman.

There are some written charges, a great many of them which state the law in some instances better than I have stated it. I take them to be the law, and, for that reason, I am giving to you those which I consider to be proper.

The court thereupon read the written charges to the jury.

WRITTEN CHARGES

8. I charge you Gentlemen of the Jury before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 1 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said C. J. Adams alias Charlie Adams, did on to wit: [fol. 128] the 10th day of June, 1944, unlawfully and knowingly aid, counsel and abet the said Samuel B. Towns, to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 1, Dallas County, Alabama.

Given. McDuffie.

14. I charge you Gentlemen of the Jury before you can convict the defendant, C. J. Adams, alias Charlie Adams, under Count 7 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that said defendant, C. J. Adams alias Charlie Adams, had knowledge of said conspiracy and did conspire with the said Walter Towns and Carrie Lee Towns to aid and assist the said Samuel B. Towns, Samuel C. Towns and John Towns to fail to present themselves for registration at proper time and place as alleged in said indictment.

Given. McDuffie.

21. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 7 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty from the evidence that the said C. J. Adams alias Charlie Adams, had knowledge of a conspiracy and did conspire with the said Walter Towns and Carrie Lee Towns to aid and assist Samuel B. Towns, Samuel C. Towns and John Towns to fail to present themselves for registration at the proper time and place as alleged in said indictment.

Given. McDuffie, J.

28. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 7 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said C. J. Adams alias Charlie Adams, [fol. 129] actually entered into a conspiracy with the said Walter Towns and Carrie Lee Towns with the intended purpose to aid and assist the said Samuel B. Towns, Samuel C. Towns and John Towns to fail to present themselves for registration at the proper time and place as alleged in said indictment.

Given. McDuffie.

34. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 6 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said defendant, C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, knowingly aid the said John Towns to unlawfully and

knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2, in Dallas County, Alabama.

Given. McD.

44. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams under Count 7 of said indictment, you must believe beyond a reasonable doubt and to a moral certainty that said defendant, C. J. Adams alias Charlie Adams, consciously participated at the time in effectuation of the unlawful purpose.

Given. McDuffie.

Judge McDuffie: I want to know now, gentlemen, if there are any exceptions to the court's oral charge from either side. If you have any exceptions to anything I have said to the jury, I will be glad to hear from you.

Mr. McConnell: The government is completely satisfied with the charge, except that since there are three defendants named in the indictment and two of them are not on trial, I believe the verdict should specify the name of C. J. Adams.

[fol. 130] Judge McDuffie: Yes, Gentlemen, when you write your verdict be sure to write the name C. J. Adams after the defendant. He is the only defendant on trial. The verdict would certainly refer to him. I think you are wise in making the suggestion. Now, Mr. Gayle, have you any exceptions?

Mr. Gayle: No exceptions.

Judge McDuffie: Gentlemen, you are going to be in charge of the deputy marshal, who will wait on you and look after you, and if you cannot reach an agreement at an early hour, he will take you to supper and bring you back and let you work some more. I will be subject to your call if you do reach a verdict. Some of you may want to get away early in the morning. It would be hard on the clerk to wait until midnight, and it might be better to come back tomorrow, for the clerk would have to be here in order to pay you tonight. I guess we had just better not figure on your getting away tonight unless you come to a conclusion quickly. I mean, of course, within a reasonable length of time. Don't hurry about it. You would not want to hurry about it, for you would seriously

consider the evidence presented here. We want to work to your convenience. If you are through, we want to help, but I am not going to ask the deputy clerk to come down here late at night and fix up your mileage and per diem, but if you reach a verdict, rather than have you kept together,—you have to be kept together until your verdict is reached—at any reasonable hour, I will be at the hotel and can be brought down to get it. Now, gentlemen, you twelve men may retire and make up your verdict.

The foregoing constitutes all the evidence that was offered in said case relating to the guilt or innocence of the defendant, of the charge contained in the indictment, or having any bearing upon the rulings of the court, or as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved.

[fol. 131] Comes now C. J. Adams alias Charlie Adams, the defendant in the above entitled cause and presents this, his Bill of Exceptions, to the Honorable John McDuffie, Judge of the United States District Court for the Southern District of Alabama, Northern Division, who presided at the trial of this cause and prays that he settle and duly sign the said Bill of Exceptions before the expiration of the time heretofore fixed for the settlement thereof, and order that same may be duly filed according to law and the rules of this Honorable Court.

C. J. Adams, Defendant, T. G. Gayle, Attorney.

Presented as a true Bill of Exceptions by the Defendant this 14th day of Mch, 1946.

John McDuffie, Judge of the United States District Court for the Southern District of Alabama, Northern Division.

Approved as a true Bill of Exceptions and ordered filed this the 14 day of Mch, 1946.

John McDuffie, Judge of the United States District Court for the Southern District of Alabama, Northern Division.

[File endorsement omitted.]

[fol. 132] IN UNITED STATES DISTRICT COURT

Motion to Transmit Original Exhibits to Circuit Court of Appeals

[Title omitted]

Comes T. G. Gayle, attorney for C. J. Adams alias Charlie Adams, and Albert J. Tully, United States District Attorney for the Southern District of Alabama, Northern Division, and respectfully shows unto your Honor as follows:

That there was offered in evidence U. S. Exhibit 1 certified copy of birth certificate of Mary Peterson, U. S. Exhibit 2 certified copy of birth certificate of Sally Peterson, U. S. Exhibit 3 certified copy of birth certificate of Fed Peterson, U. S. Exhibit 4 birth certificate of Samuel C. Towns, U. S. Exhibit 5 birth certificate of Sammy B. Towns, U. S. Exhibit 6 birth certificate of John Towns, U. S. Exhibit 7 verification of birth record of Isaac Towns, U. S. Exhibit 8 verification of birth record of Isham Towns, U. S. Exhibit 9 form of delayed certificate of birth, U. S. Exhibit 10 supporting document for Sammy B. Towns, U. S. Exhibit 11 supporting document for Samuel C. Towns, U. S. Exhibit 12 supporting document for John Towns, U. S. Exhibit 13 certified copy of certificate of birth of Isaac Towns, U. S. Exhibit 14 certified copy of certificate of birth of Isham Towns, U. S. Exhibit 15, Bible, and it is to the best interest of all parties concerned that the originals of the above named Exhibits be transmitted to the Circuit Court of Appeals and that copies not be incorporated in the transcript of record.

Now, therefore, the said T. G. Gayle, and Albert J. Tully, pray that this Honorable Court will enter an order directing that the originals of the above numbered and named Exhibits be transmitted to the Circuit Court of Appeals and that copies not be incorporated in the transcript of record.

T. G. Gayle, Albert J. Tully.

[fol. 133] *Duly sworn to by T. G. Gayle and Albert J. Tully jurats omitted in printing.*

[fol. 134] IN UNITED STATES DISTRICT COURT

ORDER DIRECTING ORIGINAL EXHIBITS SENT TO CIRCUIT COURT OF APPEALS—Filed March 14, 1946

[Title Omitted]

The attorney, T. G. Gayle for C. J. Adams alias Charlie Adams, and the United States District Attorney for the Southern District of Alabama, Northern Division, having filed their joint motion praying the Court to order the original Exhibits to be transmitted to the Circuit Court of Appeals on the following named and numbered Exhibits, namely:

Exhibit 1 certified copy of birth certificate of Mary Peterson, Exhibit 2 certified copy of birth certificate of Sally Peterson, Exhibit 3, certified copy of birth certificate of Fed Peterson, Exhibit 4 birth certificate of Samuel C. Towns, Exhibit 5 birth certificate of Sammy B. Towns, Exhibit 6 birth certificate of John Towns, Exhibit 7 verification of birth record of Isaac Towns, Exhibit 8 verification of birth record of Isham Towns, Exhibit 9 form of delayed certificate of birth, Exhibit 10 supporting document for Sammy B. Towns, Exhibit 11 supporting document for Samuel C. Towns, Exhibit 12 supporting document for John Towns, Exhibit 13 certified copy of certificate of birth of Isaac Towns, Exhibit 14 certified copy of certificate of birth of Isham Towns, exhibit 15, bible.

It is ordered that the above named original Exhibits shall be hereby transmitted to the Circuit Court of Appeals by the Clerk of the United States District Court for the Southern District of Alabama, Northern Division, and that they not be incorporated in the transcript of record, and that upon conclusion of the appeal they shall be re-[fol. 135] turned to the Clerk of the District Court of the United States for the Southern District of Alabama, Northern Division.

Made this 14th day of March, 1946.

John McDuffie, Judge.

[File endorsement omitted]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 136] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of June 3rd, 1946

No. 11521

C. J. ADAMS alias CHARLIE ADAMS,

versus

UNITED STATES OF AMERICA

On this day this cause was called, and, after argument by Thomas Gill Gayle, Esq., for appellant, and Albert J. Tully, Esq., United States Attorney, for appellee, was submitted to the Court.

[fol. 137] OPINION OF THE COURT AND DISSENTING OPINION OF WALLER, CIRCUIT JUDGE—Filed July 9, 1946

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 11521

C. J. ADAMS alias CHARLIE ADAMS, Appellant,

versus

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for the Southern District of Alabama

(July 9, 1946)

Before HUTCHESON, WALLER, and LEE, Circuit Judges.

LEE, Circuit Judge: The appellant in this case is by profession a notary public. John Towns and his two brothers, Samuel B. and Samuel C. Towns, who are twins, are sons of Walter Towns and Carrie Lee Towns. The appellant and the parents were indicted on four separate

counts for unlawfully aiding, counseling, and abetting the three sons in failing and neglecting to register under the Selective Training and Service Act and for conspiring together and with the three sons to cause each unlawfully [fol. 138] and knowingly to evade registration under the act by falsely representing that John Towns was born on October 9, 1928, and Samuel B. and Samuel C. Towns, on June 9, 1930. Walter Towns and Carrie Lee Towns entered pleas of guilty. A jury found appellant guilty on all four counts, and appellant received a general sentence of one year and one day in the penitentiary and a fine of $250. Appealing from the sentence thus imposed, appellant presents for our consideration the following questions:

1. Did the evidence warrant a finding that John Towns, Samuel B. and Samuel C. Towns were above the age of 18 years and old enough to register, as alleged in the indictment?

2. Did the evidence warrant a finding that appellant unlawfully and knowingly did aid, counsel, and abet the three brothers in their failure to present themselves for and submit to registration?

3. Did the evidence warrant a finding that appellant entered into a conspiracy with the three brothers and their parents, having for its purpose aiding and abetting the brothers in evasion of the Selective Service Act by failing to register?

4. Did the court err in admitting certain evidence over objection during the trial?

5. Did the court err in refusing to give the jury certain written instructions?

The facts briefly stated are: After Selective Service Local Board No. 2, Dallas County, Alabama, received reports that the three sons had not registered in compliance with the Selective Service Act, on March 21, 1944, it wrote John Towns to report without delay. Several [fol. 139] days later the parents appeared before representatives of the board in place of their son. After this appearance, but on the same day, Carrie Lee Towns called upon appellant to enlist his aid in obtaining delayed birth certificates for her sons. Appellant filled out three applica-

tions for delayed birth certificates and explained to her the need for supporting documentary evidence. The next day she appeared at his office with a "family Bible" containing the names of each of the three children with three alleged dates of birth. Having examined the Bible, appellant set forth in separate certificates the information relating to the birth dates. Later, on the same date, the three sons appeared before him, and each signed an affidavit setting forth the date of his birth as that inscribed in the Bible. Appellant testified that he asked them no questions relative to these dates. All papers prepared, including the certificates of appellant in his capacity as notary, were filed with the state board of health in Montgomery, Alabama. Thereupon, delayed birth certificates were issued and were filed with the Selective Service Board to support the contention that the boys were under the draft age.

Without material contradiction the testimony showed that the twins were born on June 9, 1923, and that John Towns was one or more years older than the twins. When they appeared before appellant, all three, therefore, were above the age of twenty.

The certificate executed by appellant with reference to the family Bible for John Towns reads:

> "I, C. J. Adams, a Notary Public in and for said state and county hereby certify that I have this day examined the Family Bible now in the possession of Carrie Lee Towns which was published by Collins [fol. 140] Clear-Type Press in the year of year not shown and the facts below appear to have been recorded many years ago. The Bible shows John Towns to have been born at Pleasant Hill Ala.; date of birth Oct. 9, 1928; name of father Walter Towns and name of mother Carrie Lee Towns."

The two certificates prepared for the twins were identical with that prepared for John except that in one the name of Samuel B. appeared and in the other the name of Samuel C. appeared, and that the date of birth in these two certificates was given as June 9, 1930. Government agents testified that appellant stated that when he first saw Carrie Lee Towns' three sons in his office in March of 1944 he believed them to be over eighteen years of age.

It was shown that appellant was experienced in matters connected with the Selective Service Act and with the procedure for obtaining delayed birth certificates. His contention that for ought he knew the Towns brothers desired birth certificates to enable them to obtain defense-plant work is meritless because the birth dates set forth would disqualify them for such work. In the light of appellant's experience in having filled out over one thousand papers in connection with the Selective Service Act, the date given in the applications for delayed birth certificates would have informed him that the accompanying certificates executed by him would be used only for the single purpose of evading registration under the Selective Service Act.

No effort was made by appellant to ascertain whether the doctor or midwife in attendance at the birth of the brothers recorded the births with the state board. In view of his knowledge that the state law required births to be registered and that the state authorities issued delayed birth certificates only in the absence of prior recordation, [fol. 141] appellant's failure first to investigate the records of the state board was a circumstance the jury could consider to show guilt.

Appellant certified that the birth dates of the sons "appear to have been recorded many years ago." The Bible itself was published in England and could not there have been lawfully printed and published prior to the issuance of a license for so doing. Although containing no publication date, the Bible did contain, at a place where the publication date would ordinarily be found, the date of the English license, March 10, 1939. The jury could conclude that a reasonable man after inspecting this Bible would not without sinister motives certify that the dates of births "appear to have been recorded many years ago."

To discredit his contention that he knew not why Carrie Lee Towns wanted the delayed birth certificates, the prosecution introduced into evidence appellant's plea of guilty to a previous indictment charging him with falsely certifying, as a notary public, that a person who actually was deceased appeared before him to make a demand for payment, this certificate being later forwarded by appellant to the Veteran's Administration.

The evidence warranted the jury in concluding that appellant knew for what purpose Carrie Lee Towns sought to obtain delayed birth certificates for her three boys and that her affidavits and their affidavits as to the dates of their births were false; that appellant knew the weight under Alabama law of his certificate concerning the age of the family Bible and the authenticity of the record births therein; and that by certifying that the year of publishing was not shown and that the dates "appear to have been recorded many years ago" appellant intended to enable the boys to obtain fallacious delayed birth certificates. Hence, the evidence warranted finding the appellant guilty [fol. 142] of aiding and abetting the three brothers in their failure to present themselves for and submit to registration, and of conspiring with Walter and Carrie Lee Towns and their three sons to enable the latter to evade registration under the Selective Service Act.

The contention that the introduction of volunteered information into the record was reversible error is without merit since the court ordered it stricken. The testimony that appellant frequented the county health office to obtain birth and death certificates was properly admitted to show appellant's knowledge of the services available in that office and to show familiarity with the procedure necessary to obtain delayed birth certificates.

To establish the year of birth of the Towns twins, an aunt, who lived in the same locality and was a sister of their mother, testified that she gave birth to twin girls in December 1923, and that her sister, the mother of the Towns twins, gave birth to twin boys earlier the same year. In corroboration, the Government offered two birth certificates showing the birth in December, 1923, of Mary and Sally Peterson. As the witness had testified that the twin girls were named Reby and Ruby Peterson, the objection was made that the identity of the twins in the birth certificates was not proved. Evidence was introduced to show that the midwife in attendance filed the certificates, that the names and addresses of the parents and midwife were correct on the certificates, and that the witness and her husband had only one set of twins. The Government also offered in evidence certificates showing birth of Isaac and Isham Towns, twin sons, to Walter and Carrie Lee Towns on June 9, 1923. The Government

proved in connection with the offering that Samuel B. and Samuel C. Towns were the only twins born to Walter and Carrie Lee Towns, and that they were born prior to the birth of the Peterson girls in the year 1923. It was [fol. 143] further shown that the midwife who filed the certificates and whose name appeared as such therein was the midwife in attendance at the birth of Samuel B. and Samuel C. Towns. The evidence, we think, properly identified the certificates with the Peterson twins and with the Towns twins. With the foundation thus laid the certificates were properly received in evidence.

Numerous written requested charges were denied, appellant says, to his prejudice. A more favorable charge for appellant could hardly have been given. The record shows that the requested charges either were covered in the court's general charge or were without support in the evidence.

No reversible error appearing, the judgment appealed from is

Affirmed.

WALLER, Circuit Judge, dissenting:

I am unwilling to attach criminal consequences to the act of notarizing a false affidavit in the absence of clear proof that the Notary counselled or procured the making of such an affidavit with knowledge of its falsity. A Notary is not required to vouch for the truth of the affidavits which he takes. He commits no crime in merely administering the oath of another even if he thinks it is false any more than does the Clerk when he swears a witness to a deposition which the Clerk might have reason to believe is false.

The affidavits were prepared by Appellant from information supplied by the mother of the three boys, and were [fol. 144] prepared before Appellant ever saw those affiants. The fact that when they came in the next day to swear to the affidavits their ages appeared to Appellant to be greater than the ages which had been stated did not make him a felon merely because of the fact the he administered the oath to the affiants.

The Government used eighteen witnesses in convincing the jury that the ages of the Towns boys were greater than those stated in their affidavits. Nevertheless, its

attorney urges that Appellant, in face of their affidavits, their mother's statement, and the birth dates written in the ancient-looking Bible, should be deemed a criminal because he did not of his own motion adjudge that the ages stated were false, notwithstanding the fact that the law does not cast upon a Notary this responsibility.

Appellant also made three certificates as to dates of birth appearing in the family Bible, but there is nothing false on the face of those certificates. The Bible was transmitted to this Court as an original exhibit. It has every external appearance of being very old. Dates purporting to show the birthdays of the Towns children are written in it. The date of publication of the Bible is not shown, but tucked away in very fine print is a statement that a license to print it was not issued until 1939. A failure by Appellant to discover this date is thoroughly understandable. Such an oversight could easily and likely occur, and, if so, it should not be characterized as the act of a felon.

He received only $3.00 for: writing six affidavits; making his certificate for each of the three sons; advising the mother as to the requisites to obtain delayed birth certificates; and taking the oaths of the three boys and their mother to those affidavits. This small sum is not sufficient to create the inference that his act was even venal, much less criminal.

[fol. 145] The evidence as to the Appellant's knowledge and intent is entirely circumstantial and signally fails, in the writer's view, to exclude every reasonable hypothesis other than that of Appellant's guilt. This negro may have been guilty of advising the making, and of aiding in the making, of false affidavits, but the evidence leaves too much to the imagination. His acts are as consistent with innocence as they are with guilt. The jury was never instructed that where circumstantial evidence is relied on to prove a material fact in a criminal case the circumstances must be such as to exclude every reasonable hypothesis other than the existence of the fact sought to be proven. But since no request was made for such a charge, and no exception taken to the failure to give such a charge, I would not reverse for this reason. I cite the failure to give such a charge merely as one explanation why the jury may have brought in a verdict of guilty without sufficient support, as I see it, in the evidence. I think the judgment should be reversed.

[fol. 146] JUDGMENT

Extract from the Minutes of July 9th, 1946

No. 11521

C. J. ADAMS alias CHARLIE ADAMS,

versus

UNITED STATES OF AMERICA

This cause came on to be heard on the trancript of the record from the District Court of the United States for the Southern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

"Waller, Circuit Judge, dissents."

[fol. 150] ORDER DENYING REHEARING

Extract from the Minutes of August 5th, 1946

No. 11521

C. J. ADAMS alias CHARLIE ADAMS,

versus

UNITED STATES OF AMERICA

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied. "Waller, Circuit Judge, dissents."

[fol. 151] CLERK'S CERTIFICATE, UNITED STATES OF AMERICA, UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 136 to 150 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 11521, wherein C. J. Adams alias Charlie Adams, is appellant, and United States of America, is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 135 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 20th day of August, A. D. 1946.

Oakley F. Dodd, Clerk, of the United States Circuit Court of Appeals, Fifth Circuit, By E. V. Vendenig, Deputy Clerk. (Seal.)

[fol. 152]

SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1946

No. 457

ORDER ALLOWING CERTIORARI—Filed October 21, 1946.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: Enter: John W. Lapsley. File No. 51321, U. S. Circuit Court of Appeals, Fifth Circuit, Term No. 457, C. J. Adams alias Charlie Adams, Petitioner, vs. The United States of America. Petition for writ of certiorari and exhibit thereto. Filed September 4, 1946, Term No. 457 O.T. 1946.